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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

SUN COUNTRY AIRLINES, INC.,
Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether an administrative agency that adopts a final rule, and thereby reverses a prior decision by the agency not to promulgate substantially the same rule, must provide a reasoned analysis in support of the change that not only evinces an awareness of the prior decision but also explains the reasons for taking a different course.

2. Whether the Court of Appeals erred in concluding that the FAA's 1989 industry study on flight attendant duty times prompted the agency to rethink the premises underlying its prior decision not to promulgate essentially the same flight attendant duty period and rest requirements.

LIST OF PARTIES TO THE PROCEEDING PURSUANT TO RULES 14.1(b) AND 29.1

Pursuant to Supreme Court Rule 14.1(b), Petitioner Sun Country Airlines, Inc. certifies that the names of all parties to this proceeding appear in the caption of this petition for a writ of *certiorari*.

Pursuant to Supreme Court Rule 29.1, Petitioner Sun Country Airlines, Inc. certifies that it is a charter air carrier certificated by the FAA under Part 121 of the Federal Aviation Regulations. Sun Country does not have any outstanding publicly-traded securities, nor does Sun Country have a publicly-owned parent, subsidiary, or affiliate.

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PETITION FOR A WRIT OF CERTIORARI

Sun Country Airlines, Inc. respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. 1a-3a) is referenced in a "Table of Decisions Without Reported Opinions" in the Federal Reporter. *See* 56 F.3d 1531.

The final rule of the Federal Aviation Administration ("FAA") promulgated in Docket No. 27229, "Flight Attendant Duty Period Limitations and Rest Requirements," was published at 59 Fed. Reg. 42974-42994 (August 19, 1994) (the "Final Rule") (App. 4a-85a).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on May 30, 1995 (App. 1a). The Court of Appeals denied Sun Country's timely petition for rehearing and suggestion for rehearing *in banc* on July 28, 1995 (App. 86a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 49 U.S.C. § 46110(e).

The Court of Appeals had jurisdiction over the proceeding below pursuant to 49 U.S.C. § 46110.

REGULATIONS INVOLVED

The Final Rule will be codified by amending 14 C.F.R. Parts 121, 125 and 135. *See* Final Rule, 59 Fed. Reg. 42974-42994 (August 19, 1994) (App. 4a-85a).

STATEMENT OF THE CASE

This case involves regulations promulgated by the FAA in its Docket No. 27229, Flight Attendant Duty Period Limitations and Rest Requirements, 59 Fed. Reg. 42974-42994 (August 19, 1994) (App. 4a-85a). The Final Rule requires that air carriers establish duty period scheduling limitations and rest requirements for flight attendants.

Petitioner Sun Country Airlines, Inc. ("Sun Country") is a charter air carrier certificated by the FAA under Part 121 of the Federal Aviation Regulations ("FAR"). Sun Country employs over 300 flight attendants. Sun Country was a participant, and submitted comments, in Docket No. 27229. Sun Country is subject to the new regulations.

I. STATUTORY AND REGULATORY BACKGROUND.

The Administrator of the FAA is empowered to prescribe "reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees" of regulated

carriers.[1] The term "airman" includes (1) flight crewmembers, *i.e.*, pilots, mechanics, engineers or other members of the crew engaged in the navigation of an aircraft while aloft, (2) ground mechanics, (3) aircraft dispatchers and (4) air traffic controllers.[2]

Flight time limitations for pilots were first mandated by Decision 83 of the National Labor Relations Board (May 10, 1934), which was incorporated into section 401 of the Civil Aeronautics Act of 1938 and section 401(k) of the 1958 Act.[3] Duty limitations for "airmen" are currently set forth in the FAR. Flight attendants are not airmen or flight crewmembers engaged in the navigation of an aircraft, but are considered "other employees" by the FAA for the purpose of prescribing duty limitations "in the interest of safety."[4]

A. The Prior Rulemaking.

In late 1984 and early 1985, the FAA received two petitions for rulemaking seeking promulgation of flight attendant duty period limitations and rest requirements essentially the same as those adopted by the FAA in

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[1] Federal Aviation Act of 1958 (the "1958 Act"), Pub. L. No. 85-726, § 601(a)(5), 72 Stat. 731, 775 (previously codified at 49 U.S.C. App. § 1421(a)(5) (1988)) (current version at 49 U.S.C.A. § 44701(a)(4) (West Supp. 1995). Pub. L. No. 103-272 (July 5, 1994) mandated revision and codification of numerous transportation related statutes "without substantive change." 108 Stat. 745. Upon recodification, the word "reasonable" in § 601 of the 1958 Act (previously 49 App. U.S.C. § 1421(a)) was omitted as surplus. 108 Stat. 1185. The current official United States Code for Title 49 is not available at this time. All citations herein to Title 49 are to United States Code Annotated (West Supp. 1995).

[2] 49 U.S.C.A. § 40102(a)(8) (West Supp. 1995).

[3] 49 U.S.C.A. § 42112 (West Supp. 1995).

[4] 58 Fed. Reg. 17025 (App. 139a); FEDERAL AVIATION ADMINISTRATION, REPORT ON THE STUDY OF CURRENT INDUSTRY PRACTICE: FLIGHT ATTENDANT FLIGHT, DUTY, AND REST TIMES 2-2 (September 12, 1989).

Docket No. 27229. On December 19, 1984, a petition for rulemaking was filed by the Association of Fight Attendants ("AFA") seeking flight attendant flight and duty time limitations equivalent to those applying to flight crewmembers (*i.e.* pilots, etc.), except insofar as the flight crewmember regulations allow longer than eight hours of daily flight time in a single duty period and allow for any rest period shorter than nine hours.[5] A petition filed on April 23, 1985 by the Joint Council of Flight Attendant Unions ("JCFA") sought flight attendant duty period limitations of 14 hours for international flights and 13 hours for domestic flights, with varying rest requirements.[6]

Both the AFA and JCFA petitions contended that duty period limitations and rest requirements were necessary to protect flight attendants from extremely long and exhausting duty periods, which may lead to fatigue and a diminished ability to perform safety-related functions. NPRM, 59 Fed. Reg. 17024 (App. 136a). Due to the common subject matter of the two petitions, they were considered jointly in FAA Docket No. 24397. *Id.*

Numerous parties submitted comments in support of the petition, including the AFA, union members of JCFA, individual flight attendants, the National Transportation Safety Board ("NTSB"), the Air Line Pilots Association ("ALPA"), the International Airline Passengers Association ("IAPA"), the Director of Aerospace Medicine at Wright State University ("Wright State"), and several members of Congress. The commenters generally agreed that fatigue affects performance, but did not cite any studies directly related to flight attendants. *Id.* (App. 136a-137a).

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[5] *See* 58 Fed. Reg. 17024 (App. 135a-136a); 50 Fed. Reg. 6165 (Feb. 14, 1985); 50 Fed. Reg. 25252-253 (June 18, 1985).

[6] *See* 58 Fed. Reg. 17024 (App. 136a); 50 Fed. Reg. 31724 (Aug. 6, 1985); 50 Fed. Reg. 25252-253 (June 18, 1985).

BEST AVAIL

On January 23, 1989, over four years after the AFA petition for rulemaking was filed, the FAA issued a Denial of Rulemaking, finding that "the information, views, and arguments contained in the two petitions do not warrant the action sought." *In the Matter of the Petition of The Association of Flight Attendants and the Joint Council of Flight Attendant Unions to Amend Parts 121 and 135 of Federal Aviation Regulations*, Docket No. 24397, Denial of Petition, p. 4 (the "January 23, 1989 FAA Decision") (App. 91a). The FAA specifically determined,

> [T]here is no empirical evidence that shows any correlation between flight attendant duty time, flight attendant safety duties, and risk to passengers. For that reason there is no reasonable method to determine requirements for cost beneficial flight attendant duty times directly related to safety. There is no showing that the unrelated instances cited in a few comments of lengthy flight attendant duty time either were the result of work rules mandated by the company, or were systematic throughout the industry. Nor was there a showing that these instances had an adverse impact on safety. The cost to the carriers of administering the proposed rules, and to the FAA in enforcing them, thus cannot be justified based on any empirical or reasonably estimated safety benefit.

Id. (App. 91a). The FAA concluded that the requested rulemaking was "not in the public interest." *Id.* (App. 92a).

On January 24, 1989, H.R. 638, a bill providing for the establishment of the flight attendant duty period limitations and rest requirements was introduced in the 102nd Congress. At a hearing before the Subcommittee on Aviation of the House Committee on Public Works and Transportation on May 17, 1989, the FAA Associate Administrator for Regulation and Certification advised the subcommittee of the agency's intent to initiate new

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studies of flight attendant scheduling practices. NPRM, 58 Fed. Reg. 17025 (App. 138a).

B. The Industry Study.

Four months following its testimony on H.R. 638, the FAA issued an industry study on flight attendant scheduling practices. FAA, REPORT ON THE STUDY OF CURRENT INDUSTRY PRACTICE—Flight ATTENDANT FLIGHT, DUTY, AND REST TIMES (September 12, 1989) (the "Industry Study"). The Industry Study undertook a comprehensive review of U.S. air carrier flight attendant scheduling practices and actual work hours of flight attendants. The data collected for the Industry Study indicated that certain types of problems related to flight attendant duty hours may occur more frequently in certain industry segments. The Industry Study also noted that a variety of mechanisms were in place throughout the industry to respond to such problems. NPRM, 58 Fed. Reg. 17025 (App. 138a). No later analysis or compilation of relevant data regarding flight attendant scheduling practices since the 1989 Industry Study has been undertaken by the FAA.

C. The March 13, 1991 Hearing.

Flight attendant duty limitations and rest requirements continued to be the subject of congressional debate. On March 13, 1991, eighteen months after the Industry Study was issued, the FAA participated in a hearing held by the Aviation Subcommittee of the House Committee on Public Works and Transportation on the specific subject of flight attendant duty and rest. *See Flight Attendant Duty Time Limitations: Hearing Before the Subcommittee on Aviation of the House Committee on Public Works And Transportation*, 102nd Cong., 1st Sess. 8 (March 13, 1991) (testimony of Anthony J. Broderick, Assoc. Admin. for Reg. and Cert., FAA) (the "March 13, 1991 FAA Testimony") (App. 93a-132a). The FAA

did not recommend rulemaking at that hearing.[7] The FAA stated that the data reported by the Industry Study were not "dispositive", but that "Should research results or other data suggest in the future that a regulatory solution is appropriate, [the agency would] address that possibility after reviewing that data." March 13, 1991 FAA Testimony, at 8 (App. 95a-96a). The FAA specifically noted that "[t]he preponderance of flight attendant schedules appear[ed] to be well within a zone of reasonableness," while "[s]ome occasional work practices . . . appear[ed] to be excessive." *Id.* (App. 95a). The FAA further observed,

> [T]here are no readily quantifiable safety benefits that we can identify to offset the cost [of flight attendant duty limitations]. This is a fact which we noted in denying the flight attendant union positions [in 1989], and it remains undisputed today.
>
> Data from 1975 through 1989 showed that approximately 38,000 air carrier passengers and several thousand additional crew were aboard aircraft involved in evacuation or evacuation-related occurrences. We have been unable to identify a single incident in that array, however, that fairly could be said to have adversely been affected by flight attendant fatigue. In other words, the data do not identify flight attendant fatigue as a factor.
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> * * * *
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> In this instance, based on the absence of demonstrable, quantifiable benefits to the traveling public that would offset the clear costs of the rule, the Administration has concluded that rulemaking is not warranted.

March 13, 1991 FAA Testimony, p. 8 (App. 95a-96a).

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[7] Final Rule, 59 Fed. Reg. 42974 (App. 8a); NPRM, 58 Fed. Reg. 17025 (App. 139a); March 13, 1991 FAA Testimony, 8-9 (App. 95a-96a).

D. The Final Rule.

Eighteen months after the FAA testified before Congress that the Industry Study produced no data or conclusions that supported rulemaking, the FAA issued the NPRM in Docket No. 27229, stating, "the results of the study suggest the need for regulatory action, which is provided by this NPRM." *See* NPRM, 58 Fed. Reg. 17024, 17025 (App. 138a). The NPRM began with a brief overview of the history of previous attempts to implement flight attendant duty limitations and rest requirements. The NPRM mentioned, but did not discuss, the two prior petitions filed by the AFA and JCFA in 1984 and 1985, some of the comments filed in support of the petitions in Docket No. 24397, and the FAA's decision to deny the rulemaking petitions. *Id.* at 17024-025 (App. 135a-138a).

The FAA received fifty-one comments in response to the NPRM. Commenters that supported adoption of flight attendant duty period limitations and rest requirements in Docket No. 27229 included the Coalition of Flight Attendant Unions (comprised of the AFA and previous members of JCFA), individual flight attendants, the NTSB, ALPA, IAPA, Wright State, and a member of Congress who strongly supported the comments of the Coalition of Flight Attendant Unions. Final Rule, 59 Fed. Reg. 42975 (App. 8a-9a); Index of FAA Docket No. 27229.

The FAA issued the Final Rule on August 19, 1994. The Final Rule requires that scheduled duty periods for flight attendants may not exceed 14 hours. Two-hour increments of additional duty time may be gained if the carrier augments the required crew complement by one additional flight attendant for each two-hour period gained up to the allowed maximum duty period of 18 hours, or 20 hours if the scheduled duty period includes one or more flights that take off or land outside the 48 contiguous states. Final Rule, 59 Fed. Reg. 42977-978

(App. 17a-21a). The Final Rule also requires a minimum rest period of nine hours for a duty period assignment of 14 hours or less, and 12 hours if the duty period exceeds 14 hours. Final Rule, 59 Fed. Reg. 42979-980 (App. 24a-29a).

The Final Rule provides air carriers the option of applying flight crewmember (*i.e.* pilot) flight, duty and rest requirements to flight attendants. An air carrier electing this option must establish written procedures for applying the requirements. Such procedures must be approved by the Administrator of the FAA prior to implementation and must be applied to all flight attendants used in the air carrier's operations. Final Rule, 59 Fed. Reg. 42975-976 (App. 10a-14a).

II. PROCEEDINGS BEFORE THE COURT OF APPEALS.

On September 1, 1994, Sun Country filed a petition for review of the Final Rule in the Court of Appeals. To maintain the *status quo* pending outcome of judicial review before the Court of Appeals, Sun Country filed an emergency motion for stay of the compliance date of the Final Rule with the court on February 1, 1995, based upon the four-prong test for issuance of a stay enunciated in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) and *Washington Metropolitan Area Transit Comm'n.* v. *Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). On February 13, 1995, the Court of Appeals entered an order staying the compliance date of the Final Rule and expediting consideration of the case.[8] The Court of Appeals heard oral argument on

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[8] The Court of Appeals expedited the proceeding on its own motion without explanation, although perceived safety considerations of the Final Rule may have contributed to the court's decision. The FAA, in response to Sun Country's emergency motion for stay, unsuccessfully argued that Sun Country's failure to seek expedited action from the Court of Appeals rendered its claim of irreparable harm specious. Accordingly, Sun Country, in the pres-

May 19, 1995, and issued its decision denying Sun Country's petition for review on May 30, 1995 (App. 1a-3a).

Before the Court of Appeals, Sun Country maintained that the FAA's promulgation of the Final Rule, which represented a reversal of its decision in 1989 not to promulgate essentially the same flight attendant duty period limitations and rest requirements, was arbitrary and capricious because the agency did not sufficiently articulate a reasoned analysis in support of the change of position. Sun Country specifically argued in its briefs that the FAA Industry Study could not provide the necessary factual predicate for the Final Rule because (1) the Industry Study was flawed according to its terms and (2) the FAA as late as March 1991 testified before Congress that the data reported by the Industry Study did not support rulemaking.[9]

In its May 30, 1995 opinion, the Court concluded that the FAA, in its Docket No. 27229, adequately carried its burden to supply a reasoned analysis in support of the agency's change of position. In support of its decision, the Court found:

> The FAA's notice of proposed rulemaking, and final rule, both make clear that the agency's 1989 study of flight attendant flight, duty, and rest times in the air carrier industry prompted it to rethink its earlier decision. Significantly, when the FAA rejected proposed flight attendant duty period scheduling rules in 1989, it specifically noted the absence of any clear information concerning flight attendant duty time. The 1989 study furnished the information that was previously missing and caused the agency to rethink the premises underlying its original position. Thus, it is clear from the record and from the agency's

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ent proceeding, will not object if respondent FAA seeks expedited consideration of any aspect of this case.

[9] *See* Sun Country Final Brief, pp. 13-15, n.8 (April 21, 1995); Sun Country Reply Brief, pp. 12-15 (April 18, 1995).

> stated rationale that it adopted a new position based on new information.
>
> While the FAA ideally could have explained its view more fully, it is a well-established principle of administrative law that we may "uphold a decision of less than ideal clarity if the agency's path may be reasonably discerned." Here, the agency's path is tolerably discernable. . . .

Slip op., pp. 1-2 (App. 2a) (internal citations omitted).

The Court of Appeals denied Sun Country's timely petition for rehearing and suggestion for rehearing *in banc* on July 28, 1995 (App. 86a). To preserve the *status quo* pending a petition for *certiorari*, Sun Country filed a motion for a 30-day stay of mandate with the Court of Appeals on August 3, 1995, which was denied on August 24, 1995. The Court of Appeals issued its mandate on August 25, 1995.

REASONS FOR GRANTING THE PETITION

The Supreme Court's decision in *State Farm* requires that an agency which reverses a prior decision must state a "reasoned analysis" for the change as part of the agency's articulation of a "satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983).

In the administrative proceeding below, the FAA reversed its prior decision not to promulgate essentially the same flight attendant duty period and rest regulations that were adopted in Docket No. 27229. Although the FAA mentioned its prior inconsistent position, the FAA provided no reasoned analysis that explained the agency's reasons for taking a different course. Further clarification of the Supreme Court's decision in *State Farm* is needed to ensure that administrative agencies confront reversals

of policy squarely and explain why the departure is reasonable.

In its decision issued May 30, 1995, the Court of Appeals concluded that the FAA's 1989 Industry Study of flight attendant duty times prompted the agency to rethink its prior decision not to promulgate essentially the same flight attendant duty period and rest requirements. The FAA's March 1991 testimony before Congress, however, makes clear that the agency believed the Industry Study provided no new data or information that would justify adoption of the flight attendant duty regulations then under consideration. Notwithstanding the Court of Appeals' conclusion, the administrative record in this proceeding proves that the agency's stated rationale for the reversal is wholly inaccurate and that the Industry Study cannot provide the factual predicate for the required rational connection between the facts and the choice made.

The error committed by the Court of Appeals emphasizes the FAA's lack of a stated rationale for reversal of the agency's 1989 denial of rulemaking. The Court of Appeals' use of the "reasonably discernible" rubric as a substitute for the agency's own reasoned analysis emasculates the arbitrary and capricious standard of the Administrative Procedure Act (the "APA"). In contravention of this Court's pronouncement in *State Farm*, the Court of Appeals attempted to make up for the agency's deficient analysis and supplied a basis for the FAA's actions that the agency did not itself articulate and, moreover, one which is proven erroneous by the administrative record.

Clarification of the Supreme Court's decision in *State Farm* is needed to ensure consistent application of the arbitrary and capricious test as it pertains to reversals of agency positions. While *State Farm* teaches that an agency reversal requires a reasoned analysis for the change, the

opinion provides little guidance as to what may constitute a reasoned analysis.

In addition, the Court of Appeals' decision in this proceeding is in apparent conflict with the First Circuit's decision in *Citizens Awareness Network, Inc.* v. *FCC*, 59 F.3d 284 (1st Cir. 1995), the Sixth Circuit's decision in *Radio Ass'n on Defending Airwave Rights, Inc.* v. *DOT*, 47 F.3d 794 (6th Cir. 1995) and the D.C. Circuit's decision in *United Video, Inc.* v. *FCC*, 890 F.2d 1173 (D.C. Cir. 1989).

The Court of Appeals' gross misapplication of the standard enunciated by the Supreme Court for reviewing agency reversals of position, combined with the apparent conflict between the Court of Appeals' decision and the decisions of other Circuit Courts of Appeals, presents a substantial question deserving of Supreme Court review and may warrant summary disposition under Supreme Court Rule 16.1.

I. THE COURT OF APPEALS' DECISION SERIOUSLY UNDERMINES THE ARBITRARY AND CAPRICIOUS STANDARD ARTICULATED BY THIS COURT IN *STATE FARM*.

In *State Farm*, this Court considered an agency's revocation of a regulation promulgated under a previous administration. The Court determined that, in such an instance, "an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." *Id.* at 42. This burden of additional explanation, however, does not intensify the scope of review under the arbitrary and capricious test. *Id.* at 41, 44. Any agency, even one reversing a course of conduct, must "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.' " *Id.* at 43 (quoting *Burling-*

ton Truck Lines v. *United States,* 371 U.S. 156, 168 (1962)). One aspect of the required satisfactory explanation, however, is a stated justification for any reversal of position. *Id.* at 52.

In January 1989, and again in March 1991, the FAA determined that there was no warrant for the very kind of duty period limitations and rest requirements which were adopted by the agency in 1994. Throughout the administrative record in Docket No. 27229, the FAA merely reiterated data and arguments that were presented to, and rejected by, the agency long before the current rulemaking was initiated. The NPRM and Final Rule simply mentioned the FAA's prior refusals to establish essentially the same flight attendant duty time limitations supported by essentially the same arguments made by mostly the same commenters, but provided *no* reasoned analysis for the different conclusion in 1994. Given this context, the FAA should have explained what had happened in five years to justify this complete reversal or, if nothing had happened, why the earlier determination had been wrong from the start.

Rather than remanding the Final Rule to the FAA for its failure to supply a reasoned analysis for the change, the Court of Appeals relied upon certain language in *State Farm* which allows a reviewing court to uphold a decision of "less than ideal clarity" if the agency's path may be "reasonably discerned." App. 2a. The Court of Appeals determined that the Final Rule and NPRM both make clear that the FAA's 1989 Industry Study provided new information that prompted it to rethink its earlier decision. The Court of Appeals concluded that "While the FAA ideally could have explained its view more fully, . . . the agency's path [was] tolerably discernable." App. 2a.

The Court of Appeals ignored the fact, explicit in the administrative record, that, on March 13, 1991, more than eighteen months after issuance of the Industry Study,

the FAA did not recommend rulemaking for flight attendant duty period limitations during testimony given to the Aviation Subcommittee of the House Committee on Public Works and Transportation. Final Rule, 59 Fed. Reg. 42974 (App. 8a); NPRM, 58 Fed. Reg. 17025 (App. 139a); March 13, 1991 FAA Testimony, p. 8 (App. 95a-96a). Examination of the actual transcript of the testimony given to that subcommittee by Mr. Anthony J. Broderick, FAA Associate Administrator for Regulation and Certification, confirms that the FAA found no empirical data reported in the September 1989 Industry Study that supported adoption of flight attendant duty period limitations and rest requirements then under consideration. March 13, 1991 FAA Testimony, p. 8 (App. 95a). This forthright testimony makes clear that the results of the Industry Study led the FAA in 1991 to reach the same conclusion that it reached on January 23, 1989, namely that rulemaking was not warranted. *Id.* (App. 96a); January 23, 1989 FAA Decision, p. 4 (App. 91a).

The March 13, 1991 FAA Testimony proves that the 1989 Industry Study cannot provide the necessary empirical foundation for the 1994 final rule, and refutes both the position of the FAA and the conclusion of the Court of Appeals that the 1989 Industry Study provided new information that was previously missing and caused the agency in 1994 to rethink the premises underlying its original position. No data analysis of flight attendant duty time limitations subsequent to the 1989 Industry Study is known to exist, and certainly no such information appears in the administrative record of FAA Docket No. 27229 that would support the Court of Appeals' incredible conclusion.

Sun Country does not dispute that the 1989 Industry Study, in the absence of a prior contrary decision, might support adoption of the Final Rule by providing the necessary factual foundation for a "rational connection between the facts found and the choice made." But that is not the case here. The FAA determined in January

1989 not to promulgate essentially the same regulations. Moreover, the agency impeached the results of the Industry Study in March 1991 when it reaffirmed its position that rulemaking was not warranted. The September 1989 Industry Study, thus, by itself cannot provide the necessary factual predicate for the rational connection required under the arbitrary and capricious standard.

If the Industry Study could not have prompted the agency to issue the Final Rule, something else must have. If in fact the only thing that has happened since 1991 is that the FAA, under a new administration, has reached a new interpretation of the same data, it is not stated in the administrative record. The FAA has declined to confront its prior decision that directly conflicts with the agency's promulgation of the Final Rule.

In *State Farm*, the Supreme Court admonished reviewing courts against attempting to make up for deficiencies in agency analysis by supplying reasoned explanations that agencies have not themselves given. *State Farm*, 463 U.S. at 43. Further clarification of the arbitrary and capricious test, as it relates to agency reversals, is needed because this admonition in practice often runs counter to the next sentence in *State Farm*, which states that an opinion of less than ideal clarity will be upheld if the agency's path may reasonably be discerned. *Id.* The error committed by the Court of Appeals in this case emphasizes the conflict. The Court of Appeals has committed the exact error against which the Court cautioned in *State Farm*. The FAA provided no reasoned explanation for the change, and the Court of Appeals attempted to provide its own explanation based on what the court determined could reasonably be discerned. What the court discerned, however, is erroneous and contrary to the administrative record.

The Court of Appeals' use of the "reasonably discernable" rubric to sanction the FAA's conduct is a gross misapplication of language in *State Farm* that severely

undermines the requirement that an agency changing its course supply a reasoned analysis for the change. The Court of Appeals' decision, in effect, declares that an agency which reverses a prior decision must do no more than provide a level of analysis for the new decision that would support the decision as if it were one in the first instance, *i.e.* no contrary prior decision existed. Gone is the requirement of *State Farm* and the APA that the agency is obliged to supply a "reasoned analysis" for the reversal itself. *See State Farm*, 463 U.S. at 42. The Court Appeals' approval of the FAA's reversal of position despite the absence of a valid rationale for the change represents a serious and troublesome departure from *State Farm* and the arbitrary and capricious standard of the APA and merits review by this Court.

The gross misapplication of the arbitrary and capricious standard in this proceeding, combined with the clear and undeniable error committed by the Court of Appeals in interpreting the administrative record, make this case particularly appropriate for summary disposition on the merits under Supreme Court Rule 16.1. *See, e.g., Palmer* v. *BRG of Georgia*, 498 U.S. 46 (1990); *City of Newport, Ky.* v. *Iacobucci*, 479 U.S. 92 (1986), *reh'g denied*, 479 U.S. 1047 (1987); *Immigration and Naturalization Service* v. *Hector*, 479 U.S. 85 (1986).

II. THE COURT OF APPEALS' DECISION CONFLICTS WITH DECISIONS OF THE FIRST, SIXTH AND D.C. CIRCUITS.

The Court of Appeals' decision in this case is in apparent conflict with the decisions of the First and Sixth Circuit Courts of Appeals as well as the D.C. Circuit. The First Circuit has held that "when an administrative agency departs significantly from its own precedent, 'it must confront the issue squarely and explain why the departure is reasonable.' " *Citizens Awareness Network, Inc. v. FCC*, 59 F.3d 284, 290 (1st Cir. 1995) (citation

omitted). It is not enough that an agency's subsequent decision stand on its own in terms of factual support and analysis. The agency must explain the reason for the departure. The burden is not a difficult one to meet, but a court cannot supply a reason the agency has not itself given. *Id.* at 291.

In *Citizens Awareness Network*, the First Circuit considered an agency's reversal of regulations, accomplished by circulation of two internal staff memoranda. Notwithstanding the lack of notice and opportunity for comment provided to the public, the First Circuit found most troubling the agency's

> failure to provide in those memos, or anywhere else, any justification or reasoning whatsoever for the change. The memos did not set forth any new facts, fresh information, or changed circumstances which would counsel the shift. Nor did they provide any legal analysis of how the new policy comported with, or at least did not conflict with, existing agency regulations.

Id. As the FCC did not confront its change in position in *Citizens Awareness Network*, the FAA in this proceeding provided no straightforward and valid explanation that squarely confronted the agency's reversal of its 1989 decision not to promulgate essentially the same final rule. The First Circuit's decision in *Citizens Awareness Network* thus conflicts with the Court of Appeals' application of the arbitrary and capricious test in this proceeding.

The decision of the United States Court of Appeals for the Sixth Circuit in *Radio Ass'n on Defending Airwave Rights, Inc.* v. *DOT*, 47 F.3d 794 (6th Cir. 1995), demonstrates that an agency which adopts a regulation despite a prior decision not to promulgate the same rule must not only acknowledge the prior inconsistent position but also must provide a reasoned analysis that explains the departure from agency precedent. In that case, the Sixth Circuit reviewed the promulgation of regulations

by the Federal Highway Administration ("FHWA") banning the use of radar detectors in commercial motor vehicles ("CMVs"). The court noted that FHWA had denied prior petitions for rulemaking for similar regulations, because the agency was concerned with federalism and believed the problem was not national in scope. *Airwave Rights*, 47 F.3d at 798.

The Sixth Circuit noted that the FHWA, in reversing its prior decision not to promulgate a radar detector ban for CMVs, had "analyzed the effects of the rule on the policy-making discretion of the states" and "concluded that 'Consistent with federalism principles, the final rule provides for a federal ban, but provides significant discretion for States in their enforcement.'" *Airwave Rights*, 47 F.3d at 801. FHWA further explained that its previous federalism concerns were erroneous because it had now determined that the safety problem really was national in scope. *Airwave Rights*, 47 F.3d at 805. The Sixth Circuit found that FHWA had provided a sufficient reasoned analysis because it had "properly changed its view of its federalism concern regarding the ban based on a fuller understanding of the national scope of the safety issue . . . ." *Id.*

In *United Video, Inc.* v. *FCC*, 890 F.2d 1173 (D.C. Cir. 1989), the District of Columbia Court of Appeals considered the FCC's reinstatement of its "syndicated exclusivity," or "syndex," rules. The court observed.

> The Commission's report reviews in detail the history of the regulation of cable, including, in particular, the 1980 decision to eliminate syndex rules. The report notes several ways in which the Commission now feels the 1980 decision to have been inadequate . . . . The Commission also faults its earlier studies for focusing on the effects repeal of syndex would have on individual stations . . . The Commission's report in toto suggests that it undertook a thorough review of the syndex question and came to a new result with full awareness of its prior choices. . . .

> [T]he Commission's detailed report assures us that it has given full consideration to the change it made, and explains its reasons for doing so.

United Video, 890 F.2d at 1181-82. The Court thus rejected claims that the FCC's reinstatement of the syndex rules was arbitrary and capricious. *Id.*

These cases demonstrate that proper application of the arbitrary and capricious standard according to the principles articulated by the Supreme Court in *State Farm* requires that an agency reversing its course must provide a reasoned analysis for the change that evinces an awareness of the change and states the reasons for taking a different course.

As a practical matter, the Court of Appeals' decision has broad implications far beyond the facts of this case, and will impact the scope of judicial review of agency action under a wide array of enabling statutes. The Court of Appeals' expansive use of the "reasonably discerned path" language in the Supreme Court's *State Farm* decision substantially lowers the standards for agency conduct under the APA, and warrants review by the Supreme Court.

CONCLUSION

For the foregoing reasons, the petition for writ of *certiorari* should be granted.

Respectfully submitted,

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September 1, 1995

Supreme Court, U.S.
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No. 95-361

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

SUN COUNTRY AIRLINES, INC.,
Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX A

[Filed, May 30, 1996]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1611 September Term, 1994

SUN COUNTRY AIRLINES, INC.,
Petitioner

v.

FEDERAL AVIATION ADMINISTRATION,
Respondent

On Petition for Review of Final Action by the
Federal Aviation Administration

Before: EDWARDS, *Chief Judge*, BUCKLEY and TATEL, *Circuit Judges.*

JUDGMENT

This cause came to be heard on a petition for review from final action of the Federal Aviation Administration ("FAA"), and was briefed and argued by counsel. The issues have been accorded full consideration by the Court and occasion no need for a published opinion. *See* D.C. CIR. RULE 36(b).

The petition for review is denied. As the petitioner contends, the FAA's decision to impose duty period scheduling limitations and rest requirements for flight attendants represents a departure from the position taken by the agency in rejecting a petition requesting similar rules in

1989. While we require agencies "to supply a reasoned analysis" in support of such a change of view, *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 42 (1983), here the FAA adequately has carried its burden. The FAA's notice of proposed rulemaking, *see* 58 Fed. Reg. 17,024 (1993), and final rule, *see* 59 Fed. Reg. 42,974 (1994), both make clear that the agency's 1989 study of flight attendant flight, duty, and rest times in the air carrier industry prompted it to rethink its earlier decision, *see* 58 Fed. Reg. 17,025 (stating that "results of [the industry study] suggest the need for regulatory action"). Significantly, when the FAA rejected proposed flight attendant duty period scheduling rules in 1989, it specifically noted the absence of any clear information concerning flight attendant duty time. *See In re The Association of Flight Attendants and The Joint Council of Flight Attendant Unions*, Docket No. 24397 (Jan. 23, 1989), at 4, *reprinted in* Joint Appendix 5. The 1989 study furnished the information that was previously missing and caused the agency to rethink the premises underlying its original position. Thus, it is clear from the record and from the agency's stated rationale that it adopted a new position based on new information.

While the FAA ideally could have explained its change of view more fully, it is a well-established principle of administrative law that we may "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 (internal quotations omitted). Here, the agency's path is tolerably discernable, and we reject petitioner's argument to the contrary. As to petitioner's arguments challenging the basis for the standard chosen by the FAA, and questioning the agency's cost-benefit analysis, we find them meritless. For the foregoing reasons, it is

ORDERED and ADJUDGED that the petition for review is denied.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. CIR. RULE 41.

PER CURIAM

FOR THE COURT:

/s/ Mark J. Langer
MARK J. LANGER
Clerk

APPENDIX B

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. 27229; Amendment Nos. 121-241; 125-21; 135-52]

R1N 2120—AE91

Flight Attendant Duty Period
Limitations and Rest Requirements

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule.

SUMMARY: This final rule sets forth regulations that require air carriers, air taxi, and commercial operators to provide duty period scheduling limitations and rest requirements for flight attendants engaged in air transportation and air commerce. This action results from public and congresisonal interest in regulating flight attendant work hours and from data contained in a Federal Aviation Administration (FAA) study of industry practice relating to flight attendant flight, duty, and rest times. This rule contributes to an improved aviation safety system by providing the opportunity for flight attendants to be rested sufficiently to perform their routine and emergency safety duties.

EFFECTIVE DATE: This regulation is effective September 19, 1994, except §§ 121.683(a)(1), 135.63 (a)(3), 135.63(a)(4)(x), 135.63(a)(5), and 135.63(b) which are not effective until the Office of Management and Budget (OMB) has approved the Paperwork Reduction Requirement. FAA will publish a document in the

Federal Register following OMB approval of the Paperwork Reduction Requirements.

COMPLIANCE DATE: March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Doneil Pollard, Air Transportation Division, AFS-203, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3735.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

Any person may obtain a copy of this amendment by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA—430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the amendment number of this final rule.

Background

Statement of the Problem

Flight attendants are crewmembers who perform essential routine and emergency safety duties. Routine duties include ensuring that carry-on baggage is correctly stowed; verifying that exit seating requirements are met, that passenger seat belts are fastened, and that galley service times are properly stowed; and conducting passenger briefings before takeoff. Emergency duties includes conducting land and water evaculations, controlling inflight fires, handling passengers who threaten the safety of other passengers or the flight, managing medical emergencies such as passenger illness or injury, managing inflight emergencies such as smoke or fire in the cabin, and managing turbulent air penetrations, airplane decompression,

and hijackings. Additionally, because flight attendants are crewmembers performing safety-related functions, they must satisfactorily complete indoctrination, initial, transition, and recurrent training requirements. In addition, they are subject to the alcohol and drug use regulations and drug testing regulations. Currently, flight attendants are the only safety-sensitive aviation group that has no regulations with respect to flight, duty, or rest periods. Such regulations exist for flight crewmembers, dispatchers, air traffic control tower operators, and aviation maintenance technicians.

This final rule is comparable to flight, duty, and rest requirements for other safety-sensitive aviation groups because it enhances public safety by requiring "rest periods" and limiting duty periods for flight attendants. These requirements protect flight attendants from work related fatigue that interferes with their ability to perform essential safety duties. No accident/incident data currently exists to provide a direct correlation between flight attendant fatigue and passenger survivability. However, the FAA recognizes that a flight attendant who is excessively fatigued is less likely to be capable of performing safety duties than an adequately rested flight attendant. This is an unacceptable safety risk. Therefore, the FAA adopts this final rule in the interest of air transportation and air commerce safety. The justification stated herein includes that which was included in Notice of Proposed Rulemaking No. 93-3, published in the Federal Register on March 31, 1993 (58 FR 17024).

Historical Review

In 1985, the FAA received two petitions for rulemaking requesting limits on flight and duty hours for flight attendants. One petition [1] sought to establish flight and

[1] This petition was submitted by the Association of Flight Attendants and summarized in the *Federal Register* (50 FR 6185) on February 14, 1985.

duty time regulations similar to current regulations for flight crewmembers. The other petition [2] recommended establishing maximum duty time limits and minimum daily, weekly, and monthly rest periods. Both petitions recommended certain flight time limitations and rest requirements for flight attendants that were more restrictive than those that existed for flight crewmembers. The FAA denied both petitions in a Denial of Petition issued on January 23, 1989, because the action sought by the petitioners was not warranted by the information, views, and arguments contained in the petitions.

Congressional legislation (H.R. 638 and S. 1170) was introduced in 1989 to establish flight attendant duty time limitations. On May 17, 1989, the Subcommittee on Aviation of the House Committee on Public Works and Transportation held a public hearing on H.R. 638. At the hearing, the FAA stated its intent to initiate further studies of air carrier flight attendant scheduling practices.

The FAA completed its "Report on the Study of Current Industry Practice-Flight Attendant Flight, Duty, and Rest Times" on September 12, 1989 (hereafter referred to as "the Industry Study" [Docket No. 27229]), and submitted a copy of the study to the House Subcommittee on Aviation. The study focused on U.S. air carrier scheduling practices and flight attendant actual work hours and highlighted cases of extended duty periods and minimum rest periods. The study indicated that flight attendant duty hour problems may occur more frequently among certain industry segments because of fundamental operational differences. The study noted that most air carriers had policies to address these problems. The study provided a framework for the FAA to address this issue with appropriate regulatory action, which is provided in this final rule.

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[2] This petition was submitted by the joint Council of Flight Attendant Unions and summarized in the *Federal Register* (50 FR 25252) on June 18, 1985.

The House Subcommittee on Aviation held another hearing on flight attendant duty and rest on March 13, 1991. The FAA did not recommend rulemaking at that hearing. Subsequent legislation on flight attendant duty and rest. H.R. 14 was passed in the House of Representatives. In 1992, the language of H.R. 14 was incorporated into a provision in the House and Senate versions of the FAA's appropriations bill; however, that provision was deleted later by the conference committee. On January 5, 1993, H.R. 14 was reintroduced in the House of Representatives.

On March 26, 1993, the FAA issued a notice of proposed rulemaking (NPRM), Notice No. 93-3. Flight Attendant Duty Period Limitations and Rest Requirements (58 FR 17024; March 31, 1993) that proposed duty period scheduling limitations and rest requirements for flight attendants engaged in air transportation and air commerce. The FAA has incorporated into this final rule comments on the NPRM received from the public during the comment period, as appropriate.

Discussion of Comments

Fifty-one commenters submitted comments in response to the NPRM. The commenters included trade and professional associations, individual flight attendants, labor organizations, part 121 and 135 operators, public interest groups, a goverment agency, a Member of Congress, and other individuals. Among the commenters were the Air Line Pilots Association (ALPA); the Air Transport Association (ATA); the Allied Pilots Association (APA); the American Cyanamid Company; AMR Combs; the Coalition of Flight Attendant Unions; Delta Airlines; Great American Airways; the National Air Carrier Association (NACA); the National Transportation Safety Board (NTSB); North American Airlines (NAA); the Regional Airline Assocation (RAA); Southwest Airlines (SWA); Sun Country Airlines (SCA); Transport Workers Union

Local 556 (TWU Local 556)—Southwest Airlines; and flight attendants, some of whom are employed by America West Airlines; Continental Airlines, Delta Airlines, and Sun Country Airlines.

Commenters addressed general and specific issues such as scheduled versus unscheduled operations; the applicaiton of flight crewmember flight, duty, and rest requirements to flight attendants; rest period requirements; duty period requirements; augmented crew requirements; reserve and deadhead status for flight attendants; flight attendant responsibility; the costs contained in the initial regulatory evaluation; and the implementation period for this final rule. Commenters also addressed the issues of flight attendant fatigue, the Industry Study, international versus domestic operations, part 125 operations, and flight attendant duty limitations and rest regulations in other nations.

Overview of the General Issues

Thirty-nine comments addressed the concept of regulating flight attendant duty period limitations and minimum "rest period" requirements. Fourteen comments did not support establishing flight attendant duty period limitations and rest requirements while 18 comments did support establishing such limits and requirements based on certain revisions to the proposed rule.

The commenters who supported regulating flight attendant duty period limitations and rest requirements included ALPA, APA. The Coalition of Flight Attendant Unions, NTSB, nine commenters who identified themselves as flight attendants, and a member of Congress who strongly supports the comments of the Coalition of Flight Attendant Unions. The commenters stated that, because a flight attendant's primary duties are safety related, establishing regulations would enhance public safety.

The 14 commenters who did not support the NPRM include Great American Airways, RAA, SCA, and nine commenters who identified themselves as flight attendants. Several of the commenters who identified themselves as flight attendants stated that the provisions in the NPRM would limit a flight attendant's opportunities to work extra trips and that flight attendants are capable of handling safety procedures and emergencies even when working longer duty periods.

Specific Issues

Apply Flight Crewmember Flight, Duty, and Rest Requirements to Flight Attendants

In the NPRM, the FAA invited comments on the possibility of modifying the proposed rule, as presented in the NPRM, to add an option for operators to either follow the proposed duty limitations and rest requirements or apply flight crewmember flight, duty, and rest requirements to flight attendants.

Eleven commenters responded to the FAA's request for comments. Seven of the commenters supported the option to permit operators to either follow the proposed duty limitations and rest requirements or apply flight crewmember requirements to flight attendants. Three commenters opposed the option. Although Delta Air Lines did not oppose the option, it expressed no interest in exercising the option.

ATA, Great American Airways, NACA, RAA, and Southwest Airlines agreed that operators should be permitted to apply flight crewmember requirements to flight attendants. ATA specified that applying flight crewmember requirements should remain an option at the operator's discretion. Great American Airways, Horizon Air, NACA, RAA, and Southwest Airlines noted that there are scheduling and economic advantages to using the same set of rules of flight crewmembers and flight attendants.

The Coalition of Flight Attendant Unions and SCA opposed establishing the option to permit operators to apply flight crewmember flight, duty, and rest requirements to flight attendants. The Coalition of Flight Attendants Unions stated that flight crewmember rules do not provide adequate protection from fatigue. SCA noted that, if this option had been a requirement in 1992, SCA would have had to hire an additional 20 flight attendants. According to SCA, the cost burden of hiring 20 flight attendants would have increased SCA domestic operating costs by $1.75 million.

FAA Response

The FAA recognizes that giving operators the option to apply flight crewmember flight, duty, and rest requirements to flight attendants provides additional scheduling flexibility and eliminates the need for an operator to have two sets of scheduling requirements for its flight crewmembers and flight attendants. This provision also will permit flight attendants on such operations to be scheduled with the same limitations as the flight crewmembers. Therefore, the FAA has adopted this option, which appears in §§ 121.467(c) and 135.273(c) of this final rule.

If an operator chooses to apply flight crewmember flight, duty, and rest requirements to flight attendants, the operator must establish written procedures for applying the requirements and the procedures must be approved by the Administrator and referenced in the certificate holder's operations specifications. The written procedures must apply to all flight attendants used in the certificate holders operation. In addition, written procedures must be applied to the certificate holder's entire operation. Certificate holders may obtain approval by submitting their procedures for preliminary review and approval to the principal operations inspectors assigned to them at the FAA Flight Standards District Offices that are charged with the overall inspection of their operations.

This approval process is similar to those used for exit seating and passenger carry-on baggage requirements. Because flight crewmember regulations were designed specifically for pilots, FAA approval is required to ensure that flight crewmember rules are adequately applied to flight attendants. In addition, the written procedures for domestic, flag, and supplemental air carriers and for commercial operators must apply the flight crewmember limitations contained in subparts Q, R, or S of part 121, except for the provisions for on-board rest facilities, as appropriate to the operation being conducted. Therefore, operators must consider the type of operation being conducted for each flight segment when scheduling flight attendants according to the option.

In addition, the written procedures for establishing duty period limitations and rest requirements for operators certificated under part 135 must include the limitations contained in subpart F, except for provisions for on-board rest facilities, as appropriate to the operation being conducted. Part 121 and 135 certificate holders are required to provide flight attendants on aircraft with certain passenger seating configurations in accordance with §§ 121.391, 135.107, or the certificate holder's operations specifications, as appropriate. The number of flight attendants required on an aircraft to meet the provisions of §§ 121.391, 135.107, or the certificate holder's operations specifications, whichever is greater, is referred to as the minimum flight attendant crew complement.

Any operator that elects the option to apply flight crewmember flight, duty, and rest requirements to flight attendants and has established written procedures for augmenting the minimum flight crewmember complement must establish procedures for augmenting the minimum flight attendant complement. The augmenting procedures must be based on the number of flight crewmembers assigned to the flight that is in addition to the minimum flight crewmember complement as specified in the aircraft

type certificate data sheet. For example, if the minimum flight crewmember complement on a Boeing 747-300 is three, as specified in the aircraft type certificate data sheet, an operator that schedules four flight crewmembers for an extended long-range flight will be required to schedule one flight attendant in addition to the minimum flight attendant crew complement that is required by §§ 121.391, 135.107, or the certificate holder's operations specifications. For example, if the operations specifications for a certain airplane requires 8 flight attendants, and if the operator adds 1 flight crewmember, that operator would be required to add 1 additional flight attendant, for a total of 9 flight attendants.

In addition, any operator that elects the option of applying the flight crewmember flight, duty, and rest requirements to flight attendants, must ensure that the definition of "rest period" in this final rule is applied to those flight attendants. (See the detailed discussion on "Rest Period Requirements" and "Reserve Status, Standby Status, or Similar Assignments" in this final rule.)

Under the provision for applying flight crewmember flight, duty, and rest requirements to flight attendants, if the Administrator finds that revisions to the written procedures are necessary for the continued adequacy of the procedures for applying flight crewmember flight, duty, and rest requirements to flight attendants, the Administrator will require the operator to make necessary changes within 30 days after being notified by the Administrator. In addition, an operator may petition the Administrator to reconsider the notice to change the procedures.

This procedure for requiring changes is consistent with the current regulatory language for aircraft inspection programs and pilot training programs contained in §§ 91.415 and 121.405, respectively, as well as a number of other regulations.

Any operator that establishes written procedures to apply the flight crewmember flight, duty, and rest requirements to flight attendants and that subsequently wishes to revise this practice and schedule flight attendants according to the duty period limitations and rest requirements in §§ 121.467 or 135.273 must amend their operations specifications in accordance with §§ 121.79(c) and 135.17(b). These sections require a certificate holder to file an application for an amendment of operations specifications at least 15 days before the effective date proposed by the applicant for the amendment, unless a shorter filing period is approved by the Flight Standards District Office charged with the overall inspection of the certificate holder.

Unscheduled Operations

The NPRM proposed duty period limitations and rest requirements for flight attendants in all domestic, flag, supplemental, and commercial operations conducted under part 121 and part 125, and in all operations conducted under part 135. No new requirements for operations conducted under part 91 were proposed. The FAA received comments from part 121 and 135 operators about the applicability of the proposed requirements to certain unscheduled operations. Those commenters included AMR Combs, ATA, American Cyanamid Company, Delta Airlines, Great American Airways, North American Airlines, and Southwest Airlines.

ATA, Delta Airlines, North American Airlines, and Southwest Airlines said that the proposed duty period limitations and rest requirements should not apply to military flights, e.g., Civil Reserve Air Fleet (CRAF) and Military Airlift Command (MAC), ATA and Southwest Airlines also said that special charters for sports teams should be excluded from duty period limitations and rest requirements. Commenters stated that because of the short notification associated with military and special char-

ters it would not be possible to obtain a waiver from the regulation to conduct them. North American Airlines stated that the proposed requirements should not apply to flights flown to remote destinations on a weekly or ad hoc basis.

AMR Combs and American Cyanamid Company believe that the proposed requirements should not apply to operations that do not require a flight attendant. AMR Combs stated that many unscheduled operators do not employ full-time flight attendants and that a flight attendant may serve more than one certificate holder.

FAA Response

In response to commenters who stated that the proposed duty period limitations and rest requirements should not apply to military flights and special charters, this final rule does not except military or special charter operations from duty period limitations and rest requirements. If a certificate holder chooses to apply the flight crewmember flight, duty, and rest time limitations option to flight attendants when conducting military and special charter flights to retain operational flexibility by scheduling the flight attendants with the flight crewmembers. §§ 121.467(c) and 135.272(c) require that the flight crewmember flight, duty, and rest requirements option be applied to all flight operations conducted by the certificate holder.

In response to AMR Combs and American Cyanamid Company, the FAA agrees with these commenters. The final rule will not apply to those operations where flight attendants are not required. However, all flight attendants who are assigned to duties in an aircraft for operations that require a flight attendant, including flight attendants in excess of the minimum flight attendant crew complement, are subject to duty limitations and rest requirements.

For example, an operator conducting operations on an aircraft with 19 passenger seats or less, which does not

require a flight attendant under § 135.107, will not be required to meet flight attendant duty period limitations and rest requirements for flights conducted on that aircraft. However, if the operator's operations specifications state that the operator will provide a flight attendant for flights on that aircraft, then the operation does require a flight attendant. Therefore, for any flight attendant assigned to flight duties on that aircraft the certificate holder is required to meet the duty period limitations and rest requirements of § 135.273.

Duty Period Limitations

The NPRM proposed limiting flight attendant duty periods. Proposed §§ 121.466(a) and 135.273(a) defined a duty period as the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The NPRM proposed that the time be calculated using either Coordinated Universal Time or the local time of the flight attendant's home base.

Eleven commenters submitted comments supporting or recommending revisions to this proposed definition.

Delta Air Lines, Southwest Air Lines, and TWU Local 556 agreed with the FAA's proposed definition.

ALPA, APA, and the Coalition of Flight Attendant Unions stated that duty periods should include non-flight duties. ALPA noted that ground duties can be as fatiguing as flight duties. The Coalition of Flight Attendant Unions recommended that the definition of a duty period be replaced with: "Any continuous period during which a flight attendant is required to carry out any task associated with the business of an aircraft operator."

To ensure that the definition of duty period explicitly excludes reserve status. ATA recommended that the following phrase be added to the definition of duty period:

" 'Duty period' does not include time when a flight attendant is on reserve status assignment, free of any specifically assigned duties other than to report for a flight assignment within a specified period of time, pursuant to a collective bargaining agreement or company work rules."

In addition to receiving comments on the definition of a duty period, the FAA also received comments on the duty period limitations proposed in the NPRM. The NPRM proposed to limit flight attendant duty periods based on the length of the duty period, the number of flight attendants assigned to a crew, and the amount of rest following the duty period. The proposed rule contained provisions (proposed §§ 121.466(b) and 135.273 (b)) to prohibit an operator from assigning a flight attendant to a scheduled duty period of more than 14 hours unless certain conditions are met. An operator would be allowed to assign a flight attendant to a scheduled duty period up to 20 hours, if the operator: (1) Assigns flight attendants in addition to the minimum flight attendant complement; and (2) schedules an extended rest period following the duty period.

Thirteen commenters submitted comments on issues pertaining to flight attendant duty period limits. The comments addressed the use of "scheduled" versus "actual" duty periods, addressed the effect of the proposed duty limits on unscheduled operators, made recommendations to the proposals, and provided proposed duty period limits.

The Coalition of Flight Attendant Unions, Southwest Airlines, and TWU Local 556 addressed the use of "scheduled" duty periods as opposed to "actual" duty periods. Southwest Airlines and TWU Local 556 agreed that the proposed duty period limitations should be "scheduled," not "actual." TWU Local 556 stated that, if this flexibility is not retained, the following would occur: (1) Flight attendants would be replaced after 14 hours of actual duty, which inconveniences passengers

and causes delays because of the need to locate crew replacements; (2) reserves would be placed at out stations; (3) crews would be rerouted to cover flights that the original crews cannot perform; (4) flight attendants would lose days off and have their schedules disrupted; (5) additional costs for crews and stranded passengers would be incurred; and (6) aircraft repositioning would be required. However, the Coalition stated that there is no justification for having no limit on actual hours and added that the actual number of flight attendant duty hours per day needs to be limited.

AMR Combs stated that scheduled duty period limitations should apply only to scheduled operations with more than 19 passenger seats.

Four commenters, including NAA, recommended revisions to the proposed duty period limitations. NAA recommended that a layover of 4 to 5 hours during which a hotel room is provided should not count as duty time. Other comments recommended limiting duty to: (1) 16 hours in 24 hours with 11 hours of flight time in domestic operations; (2) 30 hours in 5 days; (3) 16 hours with no more than 10 hours of flight time; or (4) 12 hours for flights with multiple stops.

The Coalition of Flight Attendant Unions submitted an alternative proposal to the NPRM that included duty period limitations. This alternative divided duty period limitations according to domestic, international, and long-range flights. The Coalition's alternative proposed to limit: (1) Scheduled duty periods on domestic flights to no more than 14 hours and actual duty periods to 15 hours; (2) scheduled duty periods on international flights to no more than 16 hours and actual duty periods to 17 hours; and (3) actual duty periods on long-range flights to no more than 4 hours greater than the scheduled duty time, not to exceed 20 hours. The Coalition distinguished between domestic and international duty periods and stated that it reluctantly includes a 20-hour

duty period for long range international flights to accommodate new generation aircraft, but only if additional rest is provided.

FAA Response

In establishing duty period limitations, the FAA has considered a variety of alternatives submitted by commenters, including the proposals to set different limits for different types of operations. In an effort to establish requirements that are conducive to safety and compatible with air carrier operations, the FAA also has reviewed current industry practices used to schedule flight attendants. To provide the least complicated method of establishing effective limitations for scheduling duty periods for flight attendants, the FAA has decided to adopt the scheduled duty period limitations as proposed, with a slight modification that distinguishes cosmetic and international scheduled duty periods.

The FAA has revised the definition of a duty period in this final rule to state that the time is calculated using Coordinated Universal Time or local time to reflect the total elapsed time. The phrase "or the local time of the flight attendants's home base" was replaced with "or local time" to be consistent with the definition of a calendar day. The FAA has determined that any time zone can be used, as long as the operator is consistent.

Duty period limitations are established to enhance the safety of the flying public by ensuring that flight attendants do not become overly fatigued during flight assignments. In addition, the duty period limitations are designed to suit all operations that require flight attendants without imposing a significant burden on operators.

In response to the Coalition of Flight Attendant Unions, the final rule does not provide actual duty period limitaticns because such provisions may unreasonably reduce operational flexibility. However, the final rule re-

quires that a flight attendant "be given" a scheduled rest period between scheduled duty periods, i.e., rest periods must be provided. Because duty periods are scheduled in combination with actual rest periods, the objective of ensuring the flight attendants are provided an opportunity to be rested will be met.

After further review of the Coalition comments and an analysis of flight schedules, the FAA finds that scheduled duty periods of operations wholly within the 48 contiguous states and the District of Columbia should not be allowed to exceed 18 hours. The FAA is not aware of any scheduled duty periods for these operations that currently do exceed 18 hours. However, duty periods that contain one or more flights that land or take off outside the contiguous 48 states and the District of Columbia may extend up to 20 hours, provided that an extended rest period is scheduled following the duty period and that additional flight attendants are assigned to each flight segment in the duty period. This provision will allow air carriers to conduct extended long-range operations with new generation aircraft. Moreover, sections 121.467 (b)(14 and 135.273(b)(14) will allow a flight attendant for a domestic air carrier to continue on duty beyond the time when duty would normally terminate, if circumstances exist that are unanticipated and beyond the control of the air carrier such as adverse whether conditions). This same exception will apply to flag and supplemental operations.

A duty period as defined in this final rule means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment. In response to ATA's recommendation that the definition of a duty period should state that a duty period does not include the time when a flight attendant is assigned to reserve status, the FAA refers to the definition of a duty period in §§ 121.467(a) and 135.273(a) of the final rule, which indicates that a duty period does not begin until a flight attendant reports for an assignment

involving flight time. Reserve status is discussed in further detail under the heading "Reserve Status, Stand-by Status, or Similar Assignments."

In response to NAA, all duty period assignments, including those assignments with a 4- to 5-hour break in duty at a hotel, must be assigned within duty period limitations and must meet minimum rest requirements. The FAA would not consider this to be a break in, or cessation of, the duty period.

In response to AMR Combs, this final rule applies to operations, both scheduled and unscheduled, that require flight attendants. Therefore, operators are not required to meet duty period limitations and rest requirements of this final rule for operations that do not require a flight attendant.

Duty Period Following Reduced Rest

Sections 121.466(i) and 135.273(i) of the NPRM proposed that an operator be permitted to reduce a 12-hour rest period to 10 hours following a duty period of more than 14 hours. In conjunction with this proposed provision, the FAA also proposed §§ 121.466(j) and 135.273(j), which would limit the scheduled duty period following a 10-hour reduced rest period to less than 14 hours.

ATA, Delta Air Lines, and NACA submitted comments on limiting duty periods following reduced rest. The commenters recommended that the FAA permit an operator to schedule a 16-hour duty period following a reduced rest period of 10 hours. ATA noted that this flexibility is needed for international operations.

Delta Air Lines also recommended that the phrase "14 or more hours" appearing in proposed §§ 121.466(j) and 135.273(j) be replaced with "no more than 14 hours." Delta noted that the proposal would limit the duty period following reduced rest to 13 hours 59 minutes.

FAA Response

Sections 121.467(b)(9) and 135.273(b)(9) of the final rule adopt the provisions as proposed in §§ 121.466 (j) and 135.273(j) of the NPRM, except that the provisions are revised, in response to Delta Airlines' comment, so that an operator may not schedule a flight attendant for a duty period of more than 14 hours following reduced rest. This revision permits an operator to assign a flight attendant to a duty period of up to and including 14 hours following a reduced rest period of 10 hours.

The FAA does not agree with those commenters that state that an operator should be allowed to schedule a 16-hour duty period following a reduced rest period of 10 hours. This was not proposed in the notice as it might promote problems of cumulative fatigue.

Duty Time That Exceeds Scheduled
Duty Time When Beyond the Certificate
Holder's Control

Sections 121.466(o) and 135.273(o) proposed that a flight attendant would not be considered scheduled for duty in excess of duty time limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations but, because of circumstances beyond the control of the domestic, flag, or supplemental air carrier or commercial operator (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

ALPA, APA, the Coalition of Flight Attendant Unions, Southwest Airlines, and TWU Local 556 commented on this provision.

ALPA and APA stated that the maximum duty period limit should not be exceeded by more than 2 additional hours regardless of circumstances beyond the control of the operator.

The Coalition of Flight Attendant Unions stated that this provision is unacceptable. The Coalition further stated that operators consider all delays outside their control.

Southwest Airlines and TWU Local 556 stated that this provision should apply to a flight attendant who is reassigned after reporting for work and the reassignment is beyond the operator's control.

FAA Response

The FAA has adopted this provision as proposed so that air carriers will not be penalized for operational delays such as those due to weather and air traffic control. The FAA recognizes that delays are costly and that operators avoid delays whenever possible. Sections 121.467 (b)(14) and 135.273(b)(14) of this final rule apply to flights that are assigned and scheduled and that normally terminate within allowable duty limitations. However, this provision does not apply to operational delays relating to flight attendant staffing problems. A flight attendant's duty period begins when the flight attendant reports for a flight assignment and ends when the flight attendant is released by the air carrier. Changes to a flight attendant's schedule after a duty period begins must be made in accordance with the duty period limitations and rest requirements set forth in this final rule. In addition, if a flight attendant reports for duty and is later reassigned, the scheduled duty time before reassignment must be counted as part of the total duty period.

Example: A flight attendant is scheduled for a 13-hour duty period on flight staffed with the minimum cabin crew complement. The duty period consists of two flight segments—a flight from New York to Frankfurt followed by a flight from Frankfurt to Rome. Because of adverse weather conditions, the flight leaving New York is delayed 2 hours, causing the flight attendant's duty period to exceed the scheduled 14-hour duty period limitation.

Although it is apparent at the time of departure that the flight attendant's duty period will exceed 14 hours, completion of the assignment will still comply with duty period limitations, because the flight attendant was scheduled and assigned to flights that normally terminate within the allowable duty period limitations.

However, if, for example, the flight attendant is reassigned in Frankfurt to a flight to Athens, the flight attendant's revised scheduled duty period cannot exceed a total of 14 scheduled hours, unless the flight attendant crew is augmented in accordance with §§ 121.467 (b)(4), or (5)(b)(6), as appropriate, and each flight attendant is given the minimum required rest. The flight attendant's duty period did not start over in Frankfurt because of the reassignment.

Rest Period Requirements

The FAA received numerous comments on issues related to the rest requirements proposed in the NPRM. Commenters addressed issues including the definition of a rest period, scheduled rest versus actual rest, minimum rest, reduced rest, subsequent rest, relief from duty in air transportation and air commerce for 24 consecutive hours of rest in any 7 consecutive calendar days, and onboard rest requirements.

The NPRM defined a rest period as the period when a flight attendant is free of all restraint or duty for a domestic, flag, or supplemental air carrier or commercial operator and is free of all responsibility for work or duty should the occasion arise. ATA, the Coalition of Flight Attendant Unions, and Southwest Airlines recommneded revisions to the definition of rest period. The comments submitted by ATA and the Coalition of Flight Attendant Unions addressed reserve status in their recommended definitions of rest. Southwest Airlines stated that the definition of rest period should be defined as actual hours of rest, not scheduled hours of rest. Two commenters, in-

cluding Delta Airlines, agreed with the definition of rest period as proposed in the NPRM.

The NPRM proposed requirements for scheduling rest and reduced rest periods. Sections 121.466(c) and (h) and 135.273(c) and (h) of the NPRM proposed requiring that a flight attendant scheduled for 14 hours or less of duty be given 9 consecutive hours of rest, and that a flight attendant scheduled for more than 14 hours but less than 20 hours be given 12 consecutive hours of rest. Proposed §§ 121.466(d) and (i) and 135.273(d) and (i) proposed permitting an air carrier or commercial operator to reduce these rest periods to 8 and 10 consecutive hours, respectively. Three commenters (Southwest Airlines, TWU Local 556, and TWU of America) supported the minimum rest requirements proposed in the NPRM and also indicated that the rest requirements should not be increased.

The RAA expressed concern that the requirement to provide 9 hours of rest for duty periods of more than 14 hours implies that a flight attendant who reports for a flight that is canceled is required to receive 9 hours of rest before the next duty period begins.

Commenters, including APA and individual flight attendants, indicated that the actual time available for rest during a rest period is often less than the scheduled rest period and may be as much as 2 to 3½ hours less than the number of hours scheduled in the rest period. The commenters stated that this often occurs because of time lost due to assisting passengers in deplaning, travel to and from a rest facility, and other activities such as eating. One commenter stated that it may take 35 minutes to 1 hour for passengers to deplane, for the crew to gather its belongings, and for travel to the hotel; 1 hour to eat; and 1 to 1½ hours to prepare for duty again and travel back to the airport.

The FAA received several alternatives to the proposed rest requirements. APA recommended that a flight at-

tendant scheduled for a duty period of 14 hours or less be given a scheduled rest period of at least 10 consecutive hours. The rest period could be reduced but not scheduled as a reduced rest period as long as the rest period is reasonably calculated to provide 8 consecutive hours at a suitable rest facility and the flight attendant is provided a subsequent rest period of at least 11 consecutive hours. Under the APA proposal, scheduled rest periods and reduced rest periods would have to occur during the 24-hour period preceding the scheduled end of a duty period. APA recommended that a flight attendant scheduled for a duty period of more than 14 hours but no more than 18 hours be given a scheduled rest period of at least 12 consecutive hours. This rest period could not be reduced and must occur after the completion of the scheduled duty period and immediately prior to the commencement of the subsequent duty period. The Coalition of Flight Attendant Unions proposed rest requirements based on domestic and international operations (see the discussion of Domestic and International Operations). The Coalition of Flight Attendant Unions' proposal recommended a minimum of 10 hours of rest following domestic flights, 12 hours of rest following international flights, and a rest period equal to twice the scheduled flight time for long-range international flights. The Coalition of Flight Attendant Unions' proposal did not include a provision for reduced rest RAA requested that minimum rest requirements for flight attendants be aligned with flight crewmember requirements. One commenter suggested that a rest period should be at least 9½ hours at a hotel or 12 hours from the time of release to the beginning of the next report. Another commenter stated that the proposed minimum subsequent rest is satisfactory for domestic flights but not realistic for international flights. The commenter suggested that the rest period following international flights should be 24 hours.

Several commenters recommended that the FAA establish provisions for on-board rest. APA recommended that a domestic, flag, or supplemental air carrier or commercial operator be permitted to assign a flight attendant to a scheduled duty period of more than 14 hours, but no more han 16 hours, if the inflight duties assigned to flight attendants by the air carrier or commercial operator were such that each of the cabin crew could be free of all duty for "25 percent of the scheduled block time less 1 hour." APA stated that reclining seats suitable for rest reserved for 25 percent of the assigned attendant complement would have to be available throughout the flight. APA also recommended that a domestic, flag, or supplemental air carrier or commercial operator be permitted to assign a flight attendant to a scheduled duty period of more than 16 hours, but no more than 18 hours, if the inflight duties assigned to flight attendants by the air carrier or commercial operator were such that each of the cabin crew could be free of all duty for "33 percent of the scheduled block time less 1 hour." APA added that reclining seats suitable for rest reserved for 33 percent of the assigned attendant complement would have to be available throughout the flight. The Coalition of Flight Attendant Unions recommended that a flight attendant be provided at least 1 hour of continuous rest for any flight segment scheduled for 8 or more hours of flight time, and that a passenger seat or bunk be assigned for crew rest.

FAA Response

This final rule adopts the definition of rest period and the minimum rest requirements as proposed in the NPRM. The FAA has considered the various rest requirement alternatives proposed by commenters and has determined that the rest requirements proposed in the NPRM and adopted in this final rule are adequate to ensure that flight attendants are provided the opportunity to be sufficiently rested to perform their routine and emergency safety

duties without imposing a significant burden on operators. A discussion of the comments recommending that reserve status be addressed in the definition of rest is contained under the heading, "Reserve Status, Stand-by Status, or Similar Assignments."

In response to Southwest Airlines' comment that rest should be "actual" hours of rest and not "scheduled," the FAA considers that the opportunity to rest, as provided by the rest period, to be "actual" rest. As proposed in the NPRM, this final rule requires that a flight attendant "be given" a scheduled rest period. This provision makes the operator responsible for ensuring that a flight attendant is scheduled for and receives the scheduled rest period. The FAA recognizes that how the flight attendant utilizes this rest period cannot be regulated. Requiring operators to schedule rest periods ensures that flight attendants know in advance when rest periods will occur and that they will be of a specified duration.

A minimum rest period of 9 consecutive hours is required for all duty period assignments of 14 hours or less, unless the rest period is reduced in accordance with § 121.467(b)(3) or § 135.273(b)(3). A flight attendant who reports for duty to find that the flight has been canceled would have begun a duty period and would require minimum rest. However, in response to RAA's concern, a carrier could either keep the flight attendant on duty for reassignment or release the flight attendant for a complete rest period.

Rest periods are required to occur betewen the completion of a scheduled duty period and the commencement of a subsequent duty period. Consequently, this final rule does not require that a required rest period be given immediately prior to a flight assignment. Because duty periods are defined as assignments involving flight time, a rest period is not required following assignments that do not involve flight time, such as training or ground duty assignments.

In response to commenters who indicated that the actual time available to rest is typically less than scheduled rest, the FAA considers a flight attendant to be free of all restraint or duty upon release from an assignment involving flight time. The FAA understands that the time available for sleep during a rest period may vary depending on the amount of time a flight attendant spends in other activities during the rest period. The FAA also recognizes that it cannot compel a flight attendant to use rest periods for actual rest.

Additionally, this final rule regulates the frequency and duration of required rest periods. This final rule does not regulate the quality of rest facilities nor does it require certificate holders to provide on-board rests for flight attendants.

Reduced Rest

Sections 121.466(d) and (i) and 135.273(d) and (i) of the NPRM included provisions for operators to schedule 8-hour and 10-hour reduced rest periods in conjunction with certain scheduled duty period limitations. ALPA stated that a rest period should never be scheduled for less than 10 consecutive hours. However, ALPA believes that it may be permissible for an operator to reduce a rest period to less than 10 hours because of circumstances beyond the control of the certificate holder. APA opposed the concept of reduced rest and stated that an air carrier or commercial operator should not be permitted to schedule a reduced rest period.

FAA Responses

The FAA has adopted the reduced rest provisions as proposed. This final rule permits an air carrier or commercial operator to schedule a flight attendant for reduced rest. However, no flight attendant will receive a rest period of less than 8 hours. This provision enables operators to retain a certain degree of scheduling flexibil-

ity. The reduced rest provision is adopted in conjunction with the requirement to schedule a longer rest period subsequent to an 8- or 10-hour reduced rest period. Together, these provisions prevent a flight attendant from being assigned two consecutive reduced minimum rest periods and are designed to protect flight attendants by minimizing the effects of cumulative fatigue.

24-Consecutive-Hour Rest Period During Any 7 Consecutive Calendar Days

Sections 121.466(n) and 135.273(n) of the NPRM proposed that a certificate holder be required to relieve a flight attendant engaged in air transportation or air commerce from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days. For convenience, hereafter, this requirement will be referred to as the 24-hour-in-7-day rest requirement. Proposed §§ 121.466(a) and 135.273(a) of the NPRM defined a calendar day as the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later. Labor organizations, operators, and an association commented on the proposed 24-hour-in 7-day rest requirement.

Several of the comments submitted included discussion of the term "calendar day." ATA stated that the term "calendar day" is confusing because it is unclear on which day an assignment begins or ends. APA stated that the term calendar day should specify that the local time used is that of the flight attendant's home base. In the Coalition of Flight Attendant Unions' alternative to the NPRM, the Coalition deleted the definition of the term "calendar day" but retained the provision for 24 consecutive hours of rest in 7 consecutive calendar days.

ATA and Delta Air Lines recommended that the FAA revise the proposed 24-hour-in-7-day rest requirement by replacing the phrase "every 7 consecutive calendar days" with the phrase "every 168-consecutive-hour period."

Southwest Airlines and TWU Local 556 requested that the final rule permit a flight attendant to voluntarily waive the 24-hour-in-7-day rest requirement in order to be able to work extra hours. Southwest Airlines states that, if flight attendants cannot waive this provision, Southwest would be required to hire an additional 100 flight attendants at an initial cost of $710,000 and an annual recurring cost of $660,000. TWU Local 556 stated that they applied this provision to a sample of 13 flight attendant schedules for February 1993. According to TWU Local 556, if the 13 flight attendants were not permitted to fly their schedule, which had been altered to include extra flights, each flight attendant would have lost $11,063 in extra annual income. The total lost income for 2,200 flight attendants would be $24 million.

ATA and Delta Air Lines recommended that the FAA include a provision in the final rule similar to a statement included in the preamble to the NPRM that indicated that the requirement for a 24-consecutive-hour rest period in any 7 consecutive calendar days could be postponed under certain circumstances.

AMR Combs and American Cyanamid Company noted that current §§ 135.267(f) and 135.269(d) require unscheduled operators to provide flight crewmembers with at least 13 rest periods of at least 24 consecutive hours in each calendar quarter. AMR Combs stated that the 24-hour-in-7-day rest requirement proposed in the NPRM only should apply to scheduled operations. American Cyanamid Company suggested that flight attendants could be required to meet pilot weekly rest requirements as an alternative.

Other comments submitted included: (1) A recommendation by TWU Local 556 that the FAA could require four 24-hour breaks in 30 days or require a 12-hour rest preceding the seventh duty day; and (2) a Carnival Airlines flight service schedule indicating that a flight

attendant had been scheduled for 11 consecutive days of duty without receiving a 24-consecutive-hour rest period.

FAA Response

The 24-hour-in-7 day rest requirement is designed to supplement daily rest requirements and to ensure that flight attendants receive the opportunity to obtain adequate rest. The FAA proposed the definition of a calendar day to provide a unit of measure that could be used to determine whether the 24-hour-in-7-day rest requirement is met. In response to ATA's concern that the term "calendar day" causes confusion, the FAA refers to the definition of "calendar day" in §§ 121.467(a) and 135.273(a) of the final rule, which indicates that a calendar day begins at midnight and ends 24 hours later at the next midnight. "Seven consecutive calendar days" as used in §§ 121.467 and 135.273 of this final rule means a period of 7 consecutive days beginning at midnight on the first day and ending at midnight 7 days later. In response to APA's recommendation that the definition of calendar day specify that the local time be that of the flight attendant's home base, the FAA has determined that any time zone can be used to determine whether the 24-hour-in-7-day rest requirement is met, as long as the carrier is consistent. In other words, a certificate holder may not manipulate the use of time zones when calculating 7 consecutive calendar days so as to vary the number of hours that comprise any 7 consecutive calendar days.

The FAA has considered the commenters' request to replace the proposed 7 consecutive calendar days with a 168-consecutive-hour period. The FAA notes that the NPRM used language consistent with the language contained in the current flight crewmember flight time limitations rule. The FAA has decided that it should not introduce at this final rule stage an inconsistency between the flight crewmember flight time limitations rule language and the flight attendant duty period limitations and

rest requirements rule language. The FAA will consider whether rulemaking should be initiated to replace 7 consecutive calendar days with 168-consecutive-hours.

The FAA has reviewed requests to permit flight attendants to voluntarily waive the 24-hour-in-7 day rest requirement. The FAA has not included that alternative in this final rule because the purpose of requiring 24 consecutive hours free from duty in any 7 consecutive calendar days is to ensure that flight attendants receive the opportunity to obtain adequate rest. As with rest requirements following reduced rest, the requirement for 24 consecutive hours of rest in any 7 consecutive calendar days is designed to protect flight attendants by minimizing the effects of cumulative fatigue.

In response to comments received from ATA and Delta Airlines, the FAA has determined that it is not necessary to include in this final rule provisions for permitting the 24-hour-in-7-day rest requirement to be delayed. This final rule imposes restrictions for flight attendants that parallel the restrictions that currently exist for flight crewmembers. The absence of provisions to permit the 24-hour-in-7-day rest requirement to be delayed does not preclude a flight attendant from completing a duty period assigned that has extended into the seventh calendar day because of a delay that is beyond the control of the operator. In addition, the 24-hour-in-7-day rest requirement may be delayed for reasons such as deadheading, assignment to training, and others. However, if the requirement is delayed, the flight attendant must be given the 24-consecutive-hour rest period before beginning any subsequent duty period assignment.

In response to unscheduled operators, the FAA notes that unscheduled part 135 operators conducting operations that require flight attendants have the option to apply the flight crewmember flight time limitations to flight

attendants instead of using the duty period limitations and rest requirements contained in this final rule. Sections 135.267(f) and 135.269(d) require certificate holders to provide each flight crewmember with at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter. Among other requirements, operators that choose to apply flight crewmember requirements to flight attendants would be required to provide flight attendants with at least 13 rest periods of at least 24 consecutive hours in each calendar quarter instead of relief from duty for 24 consecutive hours every 7 consecutive calendar days.

Comments on the costs associated with the 24-hour-in-7-day rest requirement are addressed in the Regulatory Evaluation Summary.

Compensatory Rest Periods

Although there was no specific proposal in the notice, the FAA requested comments on the feasibility of establishing compensatory rest periods for flight attendants when scheduled duty periods are exceeded. ATA, the Coalition of Flight Attendant Unions, and Delta Air Lines opposed the establishment of compensatory rest periods.

FAA Response

In response to the comments submitted, the FAA will not mandate compensatory rest periods in this final rule. The FAA has determined that compensatory rest is not necessary, because the duty period limitations and rest requirements contained in this final rule ensure that flight attendants receive the opportunity to be adequately rested to perform safety duties.

Reserve Status, Stand-by Status, or
Similar Assignments

The FAA recognizes that current industry practice varies with regard to the use of these terms and their relationship to duty or rest. In the NPRM, the FAA re-

quested comments on the most appropriate way to address reserve status, stand-by status, or a similar assignment. The FAA received 13 comments, primarily from air carrier associations and labor organizations. Commenters described different types of reserve status and suggested situations when reserve should be considered duty or rest.

ATA recommended adding the following phrase to the definition of rest period: "except that reserve status assignments shall be considered 'rest' for purposes of this rule, provided that the only work-related restriction shall be to report for a flight assignment within a specified period of time pursuant to a collective bargaining agreement or company work rules." The Coalition of Flight Attendant Unions recommended that the definition of rest period be revised to "the time period free of all restraint or duty from a domestic, flag, or supplemental air carrier or commercial operator and free of all responsibility, or interruption by, work or duty."

In addition, commenters indicated that different types of reserve status including "call-in" reserve and "on-call" reserve are commonly found in the aviation industry. As described by commenters, call-in reserve requires that a flight attendant contact, or be available to be contacted by, the operator at designated times for flight assignments. The commenters added that on-call reserve typically requires that a flight attendant be available for an assignment on short notice (usually within 1 hour) if contacted by the operator.

A majority of the commenters on this issue discussed whether reserve status should be considered rest. ATA, NACA, and Southwest Airlines stated that the time a flight attendant is assigned to reserve status and is not assigned to a duty period should be considered rest for the purpose of meeting the 24-hour-in-7-day rest requirement proposed in § 121.466(n) of the NPRM. RAA stated that the type of reserve in which a person must contact the company for future assignments—rather than being available for an assignment on short notice—should be con-

sidered rest because it is free of all duty except for the possibility of communication with the operators. Two individual commenters stated that the time a flight attendant spends on reserve should not be considered rest.

Four of the commenters, including ATA, Delta Air Lines, and RAA, commented on whether reserve status should be considered part of a duty period. ATA and Delta Air Lines stated that the time a flight attendant spends on reserve should not be considered a duty period. ATA noted that, if reserve is considered duty, operators will need to increase staff by 20 to 30 percent. ATA estimates that the annual cost would be $100 to $130 million for salaries, benefits, and associated training and administrative costs. Delta Air Lines expressed concern that if "on-call" reserve is considered duty, flight attendants would request at-home pay. RAA stated that the type of reserve in which a person is expected to report on short notice should be considered duty. TWU Local 556 stated that duty time for a reserve flight attendant should be calculated from actual report time to release time for a flight assignment.

FAA Response

In response to the commenters who stated that reserve status should be considered rest, the FAA notes that the time during which a flight attendant is responsible for contacting a certificate holder or for being available to be contacted by a certificate holder for an assignment (e.g., reserve or stand-by status) does not meet any rest period requirements, because the FAA has defined a rest period as free of all restraint or duty and free of all responsibility for work or duty should the occasion arise.

Specifically in response to ATA's, NACA's, and Southwest Airlines' suggestions that reserve assignments should fulfill the 24-hour-in-7-day rest requirement if no duty period is assigned, the FAA reiterates that rest period requirements are not met when a flight attendant is as-

signed to reserve status even if the flight attendant is not given a duty period assignment. A duty period, as defined in this final rule, does not begin until a flight attendant reports for an assignment involving flight time. For example, a flight attendant who has been assigned to reserve status for 24 hours but has not reported for a duty period assignment during that time will not have satisfied the 24-hour-in-7-day rest requirement. The rest requirement is not satisfied, because the reserve assignment is a restraint and includes present responsibility for work as a flight attendant if the occasion arises.

Some commenters stated that reserve status should not be restricted by duty period requirements. The FAA refers the commenters to the definition of duty period in §§ 121.467(a) and 135.273(a) of the final rule, the first sentence of which reads: "Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment. * * *" It should be clear that reserve status alone does not meet the definition of duty period. On the other hand, it also should be clear that reserve status may not be performed during a rest period. The definition of rest period in §§ 121.467(a) and 135.273(a) of the final rule states that "Rest period means the time period free of all restraint or duty for a domestic, flag, or supplemental air carrier or commercial operator and free of all responsibility for work or duty should the occasion arise."

Augmented Cabin Crews

This final rule permits operators to schedule flight attendants for duty periods of more than 14 hours provided an operator: (1) Assigns flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications; and (2) schedules an extended rest period following the duty period.

Ten commenters submitted comments on the proposed augmented cabin crew requirements addressing: (1) The concept of augmenting cabin crews in proportion to the type of aircraft; (2) the relationship between augmented cabin crews and flight attendant fatigue; and (3) the effect of augmented crew requirements on unscheduled operators.

APA, NAA, and RAA noted that the proposed augmented cabin crew requirements are not based on the size of the aircraft. APA stated that if the FAA intends the provision for augmented cabin crews to be used only for long-range operations, this should be clarified in the final rule. APA noted that, under the proposed provisions, one flight attendant would be added to either a two-person crew or an eight-person crew. NAA noted that, one additional flight attendant on a Boeing 757 is a 20 percent increase in crew; one additional flight attendant on a wide-body airplane is a 7 percent increase in crew. NAA recommended that the FAA distinguish between wide-body and narrow-body airplanes by requiring one additional flight attendant for any duty period between 14 and 20 hours on a narrow-body airplane. RAA stated that operators of airplanes that require one or two flight attendants should not be required to augment cabin crews in order to schedule duty periods longer than 14 hours. RAA added that a passenger seat will be needed for an additional flight attendant. RAA also noted that regional operators schedule some duty periods longer than 14 hours; however, many of these include an intermediate rest period.

APA, the Coalition of Flight Attendant Unions, and RAA addressed the relationship between augmented cabin crews and fatigue. APA and the Coalition stated that a larger crew does not necessarily result in a less fatigued crew and noted that American Airlines, Trans World Airlines, United Air Lines, and USAir currently assign flight attendants in addition to the minimum crew complement. APA and the Coalition of Flight Attendant Unions

noted that the proposal does not require an operator to provide a flight attendant with inflight rest. RAA stated that requiring augmented cabin crews for the purpose of reducing fatigue has been inadequately justified.

ATA and Delta Air Lines stated that the rule should permit a flight to operate if an augmented crew is assigned but not present for a flight because of unforeseen circumstances (e.g., illness or injury during a layover). Delta suggested that 1 hour of on-board crew rest for the remaining flight attendant crew could be provided in this circumstance.

AMR Combs noted that a change is needed for on-demand operators. They stated that a "larger" aircraft such as a Gulfstream or a Challenger cannot accommodate up to four flight attendants. AMR Combs stated that these operators would either apply for an exemption or not use a flight attendant.

FAA Response

This final rule provides scheduling flexibility by permitting an operator to schedule a flight attendant for a duty period of more than 14 hours if the flight attendant crew is augmented in accordance with § 121.467(b)(4), (b)(5), or (b)(6), or § 135.273(b)(4), (b)(5), or (b)(6). The augumented flight attendant crew provision permits extended duty periods to accommodate certain operational requirements such as those for long-range international flights, but this provision also may be applied to domestic operations.

The provision for augmented cabin crews is designed to reduce fatigue by decreasing flight attendant work load on a flight and by providing an extended rest period following a long duty day. Although the FAA recognizes that the provision will not require flight attendant crews to be augmented proportionally for each aircraft type, it provides the least complicated method for reducing fa-

tigue and accommodating certain operational requirements. Therefore, in this final rule, the FAA adopts the provision for augmenting cabin crews on a flight or flights with a scheduled duty period of more than 14 hours but not more than 18 hours, and scheduled duty periods that do not exceed 20 hours for duty periods that contain one or more flights that land or take off outside the 48 contiguous states and the District of Columbia.

In response to comments from AMR Combs, Delta Airlines, and RAA, this final rule contains no provision to except an operator from meeting minimum augmented cabin crew requirements when a flight attendant duty period is scheduled for more than 14 hours in operations that require a flight attendant. This includes instances in which a required crewmember is not available following a layover, e.g., due to illness or injury. Additionally, the use of an approved passenger seat is required for operators that schedule flight attendants for duty periods of more than 14 hours on aircraft that are not configured with a flight attendant jumpseat for the additional flight attendant(s).

In response to AMR Combs' comment regarding the use of flight attendants in Gulfstream and Challenger aircraft, this final rule applies to operations that require a flight attendant. Typically, Gulfstream and Challenger aircraft are not configured with more than 19 passenger seats and a flight attendant is not required to be on board. Therefore, flight attendants assigned to such operations are not subject to the duty period limitations and rest requirements in this final rule. In addition, operators have the option to apply flight crewmember flight, duty, and rest requirments to flight attendants.

Deadhead Transportation

Proposed §§ 121.466(m) and 135.273(m) described deadhead transportation as time spent in transportation, not local in character, that a certificate holder requires of a flight attendant and provides to transport the flight

attendant to an airport at which that flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home base. Under the proposal, time spent in deadhead transportation is not rest.

ATA, Delta Air Lines, and NACA requested that the final rule provide scheduling flexibility for flight attendants in deadhead transportation. ATA requested that the FAA permit: (1) Operators to schedule 2 hours of deadhead transportation to a domicile that is not counted within duty time limitations; (2) flight attendants to waive all duty time limitations when returning to a domicile and count the time as rest; and (3) flight attendants to delay the weekly rest requirement to return to the flight attendant's home base. Delta Air Lines stated that the FAA should permit a flight attendant to alter schedules to exceed the scheduled maximum duty time after the last flight segment to return to the flight attendant's home base. Delta also recommended that an operator be permitted to deadhead a flight attendant for up to 20 hours regardless of the number of assigned flight attendants. NACA suggested that the final rule clarify that the time a flight attendant spends deadheading is not limited by duty periods or the requirement to augment the flight attendant crew because no inflight duties are involved.

ATA and NACA stated that the final rule should clarify that a deadheading flight attendant is not a working member of the cabin crew for the purpose of determining if staffing requirements must be augmented.

The Coalition of Flight Attendant Unions and NACA agreed with the NPRM that the time a flight attendant spends in deadhead transportation is not rest.

FAA Response

Deadhead transportation as adopted in §§ 121.467(b)(12) and 135.273(b)(12) of this final rule is not con-

sidered part of a rest period. This use of deadhead transportation in relation to flight attendant duty period limitations and rest requirements is consistent with the application of flight crewmember flight time limitations and rest requirements.

In addition, a flight attendant scheduled for deadhead transportation is not assigned to duty in an aircraft and is not considered a working crewmember. Therefore, for the purpose of determining duty period limitations and rest requirements, deadhead transportation is not considered an assignment involving flight time and is not part of a duty period. In response to the comments submitted, the FAA reiterates that an operator is not required to augment flight attendant crews for flights when a flight attendant is assigned to deadhead transportation because the time spent in deadhead transportation is not part of a duty period. For example, an operator may schedule a flight attendant crew for a flight to Europe with a duty period of 14 hours. Immediately following the flight and before beginning a 9-hour rest period, the operator requires the flight attendant crew to deadhead for 2 hours to position the crew for the next duty period assignment. In this example, the operator is not required to augment the flight attendant crew because the deadheading portion of the assignment is not considered part of the duty period. However, the 2 hours spent positioning the crew for the next assignment are not considered part of the 9-hour rest period.

Flight Attendant Responsibility

Proposed §§ 121.466 and 135.273 state that a flight attendant may not accept a work assignment that does not meet the duty time limitations and rest requirements. Six commenters responded to this provision.

ATA, APA, Delta Air Lines, and RAA opposed this provision. The commenters stated that, if the provision were adopted, flight attendants would be subject to FAA

civil penalties. The commenters also expressed concern that the provision would interfere with labor-management relations. APA noted that a flight attendant could be permitted to complete a flight assignment that the flight attendant believes to be improper and to inform the FAA at the next opportunity.

The Coalition of Flight Attendant Unions included in its alternative the provision for a flight attendant to refuse a work assignment that does not meet the Coalition's proposed duty time limitations and rest requirements. In contrast, TWU Local 556, representing the flight attendants of Southwest Airlines, commented that the provision of flight attendant responsibility could place a flight attendant in the impossible position of risking either a fine from the FAA or discipline for insubordination from the airline if the carrier's scheduling department makes a mistake.

FAA Response

In light of comments received, the FAA has determined that only an operator, not a flight attendant, should be responsible for ensuring that duty limitations and rest requirements are met. The FAA bases its decision on the fact that a flight attendant could be called upon to decide between the violation of a regulation and possible disciplinary action from the company. That misunderstanding and conflict between company scheduling personnel and flight attendants could occur at a time when flight attendants should be giving their full attention to the passengers. In cases in which a flight attendant is aware that an assignment does not meet duty period and rest requirements, the FAA recommends that the flight attendant bring the situation to the air carrier's attention. If the situation is not corrected, the flight attendant should then inform the FAA. However, this recommendation does not preclude a flight attendant from informing the FAA before contacting the air carrier. In addition, flight

attendant duty and rest time records are subject to FAA review. Air carriers found to be in noncompliance with the regulation are subject to enforcement action.

Recordkeeping

Sections 121.683(a)(1) and 135.63(a)(5) of the NPRM proposed requiring certificate holders to maintain current records on flight attendant duty and rest time requirements. The Coalition of Flight Attendant Unions, Southwest Airlines, TWU Local 556, and TWU of America agree with the proposed recordkeeping requirements. The Coalition of Flight Attendant Unions does not anticipate that the recordkeeping requirements as proposed in the NPRM would be unduly burdensome.

NAA stated that the cost of tracking crew time for duty and rest could be very expensive. NAA noted that many small carriers do not have expensive computer tracking systems and cannot afford to do manual tracking.

Delta Airlines stated that the one-time cost for computer software changes would be $368,000. NACA noted that one of its members estimates that the proposed recordkeeping requirements would cost $50,000 annually.

FAA Response

The information and recordkeeping requirements of this final rule are currently under review by the Office of Management and Budget. Provided that they are approved by OMB, the FAA adopts the recordkeeping requirements as proposed in the NPRM. These requirements will become effective when they have been approved by OMB. The FAA anticipates that this approval will be given soon.

The FAA recognizes that a concern of the aviation industry has been the potential cost involved in tracking crew time for duty and rest periods. The regulation provides that carriers maintain current records for each flight

attendant to verify compliance with flight, duty, and rest time periods. The FAA intends to be as flexible as possible in interpreting this recordkeeping requirement. Records may be maintained by computer, by hand documentation, or by any other method that will permit a carrier to assure compliance with the regulatory requirements.

Since many carriers already track flight attendant duty periods to ensure that union contract or company guidelines on duty and rest time are met, the FAA expects that recordkeeping systems already in place will be sufficient to meet the recordkeeping requirements of the final rule with minimal modification. Carriers that do not currently track flight attendant duty periods will incur costs in developing recordkeeping systems; however, the flexibility built into the final rule should help to minimize these costs. Further, the FAA intends to assist these carriers by providing information and guidance based on already-implemented recordkeeping systems maintained by other air carriers.

Implementation Time of the Final Rule

ATA and Delta Air Lines requested that the FAA not implement this final rule immediately. They noted that operators will need time to revise their computer programs. ATA requested a 12-month implementation period; Delta requested an 18-month implementation period.

FAA Response

The FAA has considered the implementation periods proposed by ATA and Delta. However, in the interest of public safety, the FAA has determined that the final compliance date of this rule should be no later than March 1, 1995. Because most operators are currently using scheduling guidelines and tracking systems for flight attendants, the FAA has determined that the March 1, 1995, date is reasonable.

Additional Issues

Fatigue

Commenters who addressed flight attendant fatigue include ATA, the Coalition of Flight Attendant Unions, NACA, NTSB, RAA, SCA, and Southwest Airlines.

ATA emphasized that flight attendant fatigue caused by abusive scheduling or duty periods is not a problem in the scheduled airline industry. NACA, RAA, SCA, and Southwest Airlines emphasized that studies have found no correlation between flight attendant fatigue and the ability of a flight attendant to perform safety-sensitive functions. SCA point out that accident data do not specify flight attendant fatigue as a factor in delay of evacuation or in injuries or fatalities that occurred.

The Coalition of Flight Attendant Unions provided a summary of research on circadian dysrhythmia and fatigue with an extensive bibliography. NTSB reiterated Recommendation I-89-1, which stated that the Department of Transportation should "expedite a coordinated research program on the effects of fatigue, sleepiness, sleep disorders, and circadian factors on transportation system safety." Other commenters submitted copies of articles and recommendations related to fatigue.

FAA Response

The FAA has reviewed the extensive amounts of literature provided by commenters on fatigue related to travel and extended work periods as well as to shift work. Although consideration has been given to numerous fatigue studies, no accident/incident data is available to provide a direct correlation between flight attendant fatigue and passenger safety. However, it is evident that fatigue may affect flight attendant performance and that proper scheduling practices may help avoid compromising flight attendant performance. The FAA recognizes that flight attendants perform essential safety duties and has deter-

mined that the requirements contained in this final rule enhance safety by protecting flight attendants from acute and chronic fatigue. This final rule addresses the potential safety problems that could occur if fatigue flight attendants work excessive duty hours or receive inadequate rest.

Industry Study

The principal commenters who addressed the Industry Study include AMR Combs, American Cyanamid Company, the Coalition of Flight Attendant Unions, and SCA.

American Cyanamid Company stated that the Industry Study does not indicate that there is a pattern of air carriers willfully scheduling long duty days or long series of days without a day off. The Coalition of Flight Attendant Unions indicated that the Industry Study has been used as evidence that extreme examples of scheduling abuse are isolated and that the actual occurrences of scheduling abuse were most likely under-reported because the instances provided in the Industry Study were "self-selected." The Coalition further stated that, even though the instances were self-selected, the Industry Study found industry-wide flight attendant duty and rest period problems. SCA stated that the Industry Study does not provide evidence to establish any correlation among flight attendant duty time, flight attendant safety duties, and risk to passengers. AMR Combs and American Cyanamid Company noted that the Industry Study did not consider unscheduled part 135 operators.

FAA Response

The FAA conducted the Industry Study to determine if scheduling extremes exist, and, if so, to determine the nature of the extremes, not to determine the statistical frequency with which they occur or to correlate passenger risk with extreme scheduling. Access to records was

gained through the cooperation of air carriers. The air carriers did not choose individual records for examination. Based on the purpose of the study, records were selected for review when flight attendant scheduling extremes were expected to be likely. Therefore, statistical inferences cannot be made. However, the data contained in the Industry Study provides fundamental background information on flight attendant scheduling practices.

The Industry Study included a review of data from major, national, regional, and supplemental carriers. The study did not include a review of unscheduled part 135 operators because relatively few of these operators conduct operations that require a flight attendant. As previously discussed, air carriers and commercial operators conducting operations for which the FAA does not require a flight attendant will not be required to comply with flight attendant duty period limitations and rest requirements even if flight attendants are involved in those operations.

International and Domestic Operations

The proposed amendment did not make a distinction between domestic and international operations in determining flight attendant duty limitations and rest requirements. Five commenters commented on whether there should be a distinction between domestic and international operations for determining flight attendant duty period limitations and rest requirements. Four commenters, including the Coalition of Flight Attendant Unions and the International Association of Machinists and Aerospace Workers (IAM & AW), supported making a distinction. The Coalition provided definitions for a domestic flight, an international flight, and a long-range international flight. One commenter stated that flight attendants assigned to international flight require more rest than flight attendants assigned to domestic flights because flight attendants on international flights are in a state of physical desynchronization. Another commenter stated

that duty period limits should be 12 hours for domestic flights and 14 hours for international flights. NAA stated that no distinction should be made between international and domestic flights because some domestic flights are as long as international flights and the work load is the same for the crew.

FAA Response

After a review of the Coalition comments and an analysis of flight schedules, the FAA finds that scheduled duty periods for operations wholly within the 48 contiguous states and the District of Columbia should not be allowed to exceed 18 hours. The FAA is not aware of any scheduled duty periods for these operations that currently do exceed 18 hours. However, for duty periods involving one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, the duty period may not exceed 20 hours. Thus, the final rule makes this distinction between domestic and international operations.

Part 125 Operators

The NPRM proposed that each flight attendant be relieved from all duty for at least 8 consecutive hours during any 24-hour period.

Two commenters, including the Coalition of Flight Attendant Unions, addressed this proposal. The Coalition recommended that the 8-hour period free of duty be replaced with a 10-hour period free of duty.

FAA Responses

Section 125.37, Duty time limitations, currently requires a flight crewmember to be relieved from duty for at least 8 consecutive hours during any 24-hour period. The final rule incorporates flight attendants into the current provision, thus providing parallel duty time limitations for flight attendants and flight crewmembers.

Rules for Flight Attendants in Other Nations

APA, the Coalition of Flight Attendant Unions, and the IAM & AW noted that flight attendants in other nations have regulations that provide flight attendant duty time limitations and minimum rest requirements. APA stated that the proposed Joint Aviation Authorities (JAA) regulations address issues related to fatigue. The Coalition provided a copy of the proposed JAA rules.

FAA Response

During the Industry Study, the FAA conducted a review of the International Civil Aviation Organization's (ICAO) regulations relating to flight attendant flight, duty, and rest times including a review of ICAO Circular Flight Crew Fatigue and Flight Time Limitations (52-AN/47/6). The Industry Study identified 23 countries that have government regulations for flight attendant flight and duty limitations and rest requirements, and 24 countries that do not have such regulations. The FAA notes that the Joint Aviation Regulations currently do not include flight time limitations for flight attendants; however, the JAA have proposed flight time limitations for flight crewmembers and flight attendants that are currently under review by the European Community. Based on this information, the FAA has determined that flight attendant flight and duty limitations and rest requirements of some countries are less stringent than the final rule adopted by the FAA, and the requirements of other countries are more stringent than those being adopted. Therefore, the FAA considers the final role to be within the range of worldwide governmental regulations governing flight attendant duty limitations and rest requirements.

Changes to the NPRM

The FAA amended several provisions of the proposed rule in response to comments received from the public. Any changes that significantly altered the requirements

of the duty period limitations and rest requirements are discussed previously and are summarized in this section.

The NPRM made no distinction between domestic and international operations. In the final rule domestic operations are limited to up to 18-hour schedule duty periods. However, scheduled duty periods that involve one or more flights that land or take off outside the 48 contiguous states and the District of Columbia may be scheduled up to 20 hours, providing required augmentation is provided.

The FAA moved flight attendant duty period limitations and rest requirements from proposed § 121.466 in the NPRM to § 121.467 in the final rule to facilitate the incorporation of future amendments. In addition, paragraphs describing duty period and rest period provisions in the NPRM have been revised and renumbered in the final rule to incorporate new and revised requirements. The FAA also revised the NPRM to include minor editorial changes and revised the list of subjects to include additional terms.

Based on comments received, the FAA removed the proposed requirement that a flight attendant be responsible for ensuring compliance with duty period limitations and rest requirements before accepting any flight assignments. The FAA determined that this is an operator's responsibility and not the responsibility of a flight attendant.

The NPRM included the proposal that an operator may not assign a flight attendant a duty period of 14 or more hours following a 10-hour reduced rest period. In §§ 121.467(b)(9) and 135.273(b)(9), the FAA revised the NPRM to restrict an operator from assigning a flight attendant to a duty period of "more than 14 hours" following a 10-hour reduced rest period. This change permits an operator to assign a flight attendant to a duty period of up to and including 14 hours following the reduced rest period.

The FAA incorporated provisions into the final rule to give operators the option to apply the flight crewmember flight, duty, and rest requirements to flight attendants. The FAA permits this option provided that the operator establishes written procedures that are referenced in the certificate holder's operations specifications for applying the appropriate flight crewmember flight, duty, and rest requirements to flight attendants.

The following chart depicts the scheduled duty period, and augmented flight attendant crew requirements for this final rule.

Scheduled duty period	Minimum rest period	Reduced rest period	Rest period following reduced rest	No. of flight attendants
14 hrs or less	9 hrs	8 hrs	10 hrs	Minimum.
14-16 hrs	12 hrs	10 hrs	14 hrs	Minimum + 1.
16-18 hrs	12 hrs	10 hrs	14 hrs	Minimum + 2.
* 18-20 hrs	12 hrs	10 hrs	14 hrs	Minimum + 3.

* Applies only to duty periods with one or more flights that land or take off outside the 48 contiguous States and the District of Columbia.

Costs

In the NPRM, the FAA requested additional information on the costs of the proposed rule. The FAA received comments from associations, labor organizations, and part 121 operators.

ATA, which primarily represents part 121 scheduled operators, stated that the proposal would cost its members at least $8 million annually to revise current computer crew scheduling programs, hire additional personnel, extend layovers, and schedule reserves. ATA believes that the costs were understated in the NPRM and noted that they did not include an inflation factor. ATA indicated that the 15-year cost of the proposed rule would be $88,947,099 using a 7-percent discount rate and a 3-

percent inflation rate. RAA stated that the costs associated with the proposed rule are significantly understated. In addition, RAA believes that the economic effect of the proposed rule should reflect the cost burden of other recent rulemakings. NACA stated that the proposal would cost one of its members an estimated $372,000 annually for additional staffing and $50,000 annually to meet recordkeeping requirements.

The Coalition of Flight Attendant Unions stated that the median flight attendant salary, based on the average salary for supplemental air carrier fiight attendants represented by the Association of Flight Attendants (AFA), is $18,461. According to the Coalition, if 6,000 flight attendants are hired by supplemental operators, the cost in salaries will be $1,107,660 [sic]. The Coalition noted that this is one tenth the cost of random drug testing.

Delta Airlines, a scheduled part 121 operator, indicated that the initial cost to comply with the proposed rule would be $2,863,416. This cost includes the cost of hiring 36 additional flight attendants, estimated at $1,348,000; paying flight attendants during deplaning, estimated at $749,000; providing additional meals, estimated at $400,000; and modifying computer software, estimated to be a one-time cost of $367,000. Delta estimates that the annual cost to comply with the proposed rule would be $2.5 million.

Sun Country Airlines, an unscheduled part 121 operator, stated that it would be required to augment cabin crews on domestic flights more often than it now does. Sun Country Airlines also stated that, if the NPRM had been effective in 1992, the carrier would have hired an additional 34 flight attendants and the cost of domestic operations would have been $2.6 million in salaries, benefits, training, hotels, meals, deadhead travel, and administrative burden. Sun Country Airlines pointed out that the NPRM estimated that supplemental operators would absorb 60 percent of the proposal's cost while supple-

mental operators employ only 1 percent of all flight attendants.

Great American Airways, an unscheduled part 121 operator, stated that the proposed rule would impose substantially greater costs on supplemental air carriers. Positioning flight attendants would become a major expense for supplemental operators. Unanticipated schedule and routing changes could severely curtail current flexibility. However, Great American Airways stated that the disruptions mentioned above would be minimized if supplemental air carriers had the option to apply the same work rules to both flight attendants and pilots. Great American Airways estimates that the total cost savings that would be derived from implementing a single set of duty limitations for its cabin and flight crewmembers, as opposed to adopting the requirements proposed in the NPRM, would be more than $100,000 annually.

FAA Response

The comments that address the costs associated with this final rule are addressed in the Regulatory Evaluation Summary.

Paperwork Reduction Act

Information collection requirements for parts 121, 125, and 135 have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Numbers as follows: For part 121, OMB Control Number 2120-0008; for part 125, OMB Control Number 2120-0085; and for part 135, OMB Control Number 2120-0039. The FAA has prepared changes to these control numbers to reflect the additional paperwork requirements of this final rule and has submitted these changes to OMB.

In completing this rulemaking, the FAA has been mindful that it is the policy of the agency and the Admin-

istration to avoid imposing unnecessary paperwork burdens on industry. To that end, the FAA has carefully considered all comments on recordkeeping and has made every attempt to minimize the paperwork burden for carriers. For example, allowing carriers to employ a single scheduling system for entire crews—pilots and flight attendants—will enable them to avoid maintaining two separate duty schedules. Indeed, for many carriers, the FAA believes the final rule will create little or no net additional paperwork.

Regulatory Evaluation Summary

The FAA has determined that this rule: (1) Is a significant regulatory action as defined in the Executive Order; (2) is significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, summarized below, are available in the docket.

Cost-Benefit Analysis

Benefits

The FAA expects the final rule to help ensure that flight attendants are rested and alert when performing emergency and routine safety related duties and thereby reduce injuries and fatalities in air carrier accidents. However, as in the NPRM, the FAA has not quantified the benefits associated with this rulemaking because there is a lack of accident/incident data that can be used to directly correlate flight attendant fatigue with passenger fatalities and injuries. Instead, the FAA has examined the potential benefits of this rulemaking from a qualitative perspective.

Increased Safety

The FAA received comments both supporting and opposing the correlation between flight attendant duty period limitations and rest requirements and passenger safety. One commenter stated that fatigue increases during the work period, and duty times that exceed 12 hours for domestic flights and 14 hours for international flights can be expected to potentially derogate safety performance. Another commenter stated that the FAA has provided no sufficient foundation for concluding that the absence of the proposed regulations constitutes a derogation of aviation safety, and that the absence of any experience in which a flight safety problem was attributable to undue flight attendant fatigue is a strong argument that no such problem exists.

FAA Response

The FAA agrees with commenters who stated that inadequate rest or excessive duty periods could derogate safety. However, the commenters did not define acceptable or unacceptable levels of risk, and did not provide any justification for the distinction. Because quantifiable data was not available, the FAA was unable to calculate the quantitative benefits of the rule.

The FAA recognizes that inadequate rest periods for flight attendants could create a potential safety problem. Therefore the FAA expects that this final rule will ensure that flight attendants receive the opportunity to be rested and alert when performing emergency and routine safety-related duties, thereby reducing passenger and crew injuries and fatalities.

Increased Worker Productivity

The Coalition stated that, in addition to improving the safety of air travel, the regulatory evaluation should take into account the cost savings from improved worker pro-

ductivity. That commenter also stated that a careful review of various studies would likely reveal that the benefits of more reasonable duty hours and adequate rest include decreased absenteeism and health problems related to fatigue. The Allied Pilot Association stated that "the welfare of regulated employees ought to be one of the concerns of rulemakers."

FAA Response

The FAA has examined the impact of improved worker productivity as it relates to safety and has determined that reduced rest for flight attendants could impede flight attendant performance during emergency evacuations or during routine safety duties requiring a high degree of alertness. Cost savings could result from improved worker productivity; however, no information is available to quantify this benefit.

The change in duty hours coupled with adequate rest could decrease absenteeism and improve health. However, the information needed to quantify this, is not currently available.

In addition, the FAA is concerned with passenger and crewmember safety, and is sensitive to crewmember health and welfare. The FAA recognizes that employee health could improve if employees get more rest.

Costs

Cost estimates contained in this summary are based on 1993 dollars and are discounted at an annual effective rate of 7 percent. The FAA estimates that the cost to the air carrier industry of establishing flight attendant duty period limitations and rest requirements will be $42.7 million over a 15-year period. The FAA expects that operators would incur costs in the areas of record-keeping and additional staffing.

Cost estimates for supplemental air carriers and scheduled major, national, and regional/commuter operators are separated. The FAA estimates that the nondiscounted cost for all supplemental air carriers for the first year will be approximately $2.5 million, and the annual nondiscounted cost for all supplemental carriers would be approximately $2.23 million. The FAA estimates that the total discounted costs for supplemental air carriers over 15 years will be approximately $20.8 million. The FAA estimates that the first-year nondiscounted cost for scheduled major, national, and regional/commuter operators will be approximately $2.9 million, and the annual nondiscounted cost for these operators would be approximately $1.2 million. The FAA estimates that the total discounted costs for scheduled major national and regional/commuter over 15 years will be approximately $21.9 million. Therefore, over 15 years, the discounted cost for the air carrier industry will be $42.7 million.

The above cost estimate is based on the assumption that air carriers must augment their flight attendant crews. In some situations, augmentation under the flight attendant rule requirements may be avoided if an air carrier adopts and applies to flight attendants, by option, the international supplemental carrier pilot rules covering flight and duty period.

Twenty-Four Consecutive-Hour Rest Period During any Seven Consecutive Days

Southwest Airlines stated that the requirement for 24 consecutive hours of rest during any 7 consecutive days would make it necessary for the air carrier with which the commenter is affiliated to hire about 100 additional flight attendants at a first-year cost of $710,000 and a subsequent annual cost of $600,000. A commenter representing Transport Workers Union of America on behalf of Southwest Airlines flight attendants indicated that the proposed rule, if adopted, would create a financial burden

for flight attendants and their employers and would result in an average annual loss of $11,063 in extra income for each flight attendant. This loss, projected for 2,200 flight attendants for 1 year, would total $24 million in lost income.

FAA Response

The requirement for 24 consecutive hours of rest in any 7 consecutive days is designed to supplement daily rest requirements and to ensure that flight attendants receive the opportunity for adequate rest. The FAA did not verify lost flight attendant income, because the annual loss of extra income to some flight attendants represents a gain to flight attendants who would be hired. This income transfer is not considered a cost of this rulemaking.

Single Set of Duty Time Rules for Cabin and Flight Crew Members

Great American Airways stated that the total cost savings derived from implementing a single set of duty time rules for its cabin and flight crewmembers, as opposed to adopting the rules proposed in the NPRM, would exceed $100,000 per year.

FAA Response

The FAA recognizes that giving operators the option to apply flight crewmember flights, duty, and rest requirements to flight attendants may provide a cost savings to certain operators, particularly supplemental operators. The FAA expects that the operators that choose the option will incur costs that are lower than those estimated in the final regulatory evaluation.

However, the FAA recognizes that operators who choose to apply the flight crewmember regulations for duty limitations and rest requirements must submit an application to the appropriate Flight Standards District

Office for approval. This is a minor, one-time cost, and the FAA assumes that operators who choose to incur this cost would do so because it would obviate those operators from designing and establishing a tracking system for flight attendants. Instead, this option would allow them to use whatever system is in place for flight crewmembers. The application process chosen was selected deliberately out of concern that recordkeeping costs be kept to a minimum. That is, the FAA chose an application process that is very familiar to carriers, the commonly-used procedure for changes to operations specifications.

Limiting Scheduled Duty Period to Fourteen Hours

Great American Airways stated that limiting scheduled flight attendant duty periods to 14 hours would force the air carrier and other supplemental air carriers to add flight attendants at intermediate stops. The commenter stated that, because company-required deadhead transportation would be considered part of a duty period under the FAA's proposal, it would be necessary to schedule flight attendants for required rest after they completed a deadhead flight segment and before they began the next duty period.

This commenter also stated that the proposed rules would impose substantially greater costs on supplemental air carriers than other air carriers because supplemental air carriers rarely have travel privileges with scheduled carriers, and, when they do, they are often very restrictive. Finally, this commenter stated that unanticipated schedule and routing changes occur more frequently among charter operators than scheduled carriers and could severely curtail the flexibility of supplemental air carriers.

FAA Response

The FAA agrees that the greatest costs will be incurred by air carriers that schedule flight attendants for the

longest duty periods. However, the commenter does not appear to provide any information on the air carrier's ability to augment existing crews. The FAA points out that costs could be minimized by using crew argumentation as a means of compliance. In addition, time spent in deadhead transportation is not considered part of a duty period; therefore, an operator is not required to provide a rest period for flight attendants following time spent in deadhead transportation.

Overall Costs

ATA stated that the FAA has understated costs considerably. This commenter stated that the annual cost of complying with the proposed regulation would be at least $8.0 million. This cost would include programming expenses, additional personnel costs, costs associated with extended layovers, and costs associated with reserve scheduling (assuming that carrier reserve scheduling practices are not modified). Assuming a discount rate of 7.0 percent and an inflation rate of 3.0 percent, the 15-year present value cost for the association's members would be approximately $88.9 million.

FAA Response

The survey of ATA members indicates that the annual cost would be at least $8.0 million. ATA stated that added annual personnel costs for air carrier operators would be $4.0 million, additional meal/hotel expenses would be $1.5 million, and additional reserve staffing would be $2.5 million. Finally, ATA stated that carriers can expect to incur a one-time expense of between $2.0 million and $3.0 million for computer system program modifications. After contracting ATA twice after the comment period closed to obtain clarifying information, the FAA concluded that their estimate could not be used in its entirety because information such as the number of

affected carriers, wage rates, additional employees needed, or hours worked was not provided.

In addition, ATA did not provide information on the cost of augmenting the existing crew. The FAA permits longer duty periods with the use of augmented crews. FAA data indicates that many flights are staffed with more than the minimum flight attendant crew complement; therefore, little or no additional cost would be incurred to meet the crew augmentation requirements.

ATA also stated that the 15-year present value cost for its members would be $88.9 million. This estimate assumed a discount rate of 7.0 percent and an inflation rate of 3.0 percent. The basis for the commenter's estimate of the annual cost ($8.0 million) was not detailed enough for the FAA to use it or the 15-year estimate derived from it.

The FAA has nevertheless attempted to develop an industry cost estimate by recalculating the ATA estimate to exclude the ATA inflation factor and by accounting for the fact that ATA members only represent a portion of the industry that would be affected. As shown in the Regulatory Evaluation, that figure would be $78.8 million. However, the original information provided could not be fully substantiated, which suggests that the ATA estimate may not be representative of the total industry.

Supplemental Carriers

The Coalition stated that the median flight attendant salary at supplemental air carriers is $18,461. The commenter indicated that this estimate may be high because it represents the average salary at supplemental carriers that have a collective bargaining agreement with their flight attendant workforce. The commenter also stated that the FAA assumed that the rule would lead to the hiring of 6,000 flight attendants at supplemental carriers, and that the additional cost for these new hires would be

$1,107,600. The FAA received revised salary information from the commenter stating that the average salary of a flight attendant working for a supplemental carrier is $24,552, which includes $6,092 in benefits.

FAA Response

The final regulatory evaluation assumes that, in the case of supplemental operators, each flight attendant works 150 duty periods, and that a carrier's cost per duty period is $163.38. Therefore, the cost of 6,000 additional duty periods would be $982,100. To the extent practicable, this cost estimate for supplemental operations was used in developing the final regulatory evaluation.

Irregular Operations

Delta Air Lines stated that the proposed rule would cause the air carrier to incur costs associated with irregular operations. The air carrier estimated that it would have to hire 36 flight attendants at an annual salary cost of $1.3 million for irregular operations. Other costs associated with hiring additional flight attendants to meet the requirements of the proposed rule, if adopted, would total $2.86 million in the initial year. The recurring annual cost of the proposed rule, if adopted, would be nearly $2.5 million.

This commenter stated that, based on operations in June/July 1992 and January/February 1993, 62 flight attendants working together did not meet the requirements of the NPRM and would require crew replacement. The commenter typically schedules flight attendants for 3-day city pairings with an average flight attendant crew of six. Because most of the replacements that were needed were on domestic flights, the commenter used an average of four flight attendants. These results showed that 744 additional duty days would be required. The commenter calculated that an additional 36 flight attend-

ants would be needed because a reserve flight attendant is available to fly an average of 20.5 days per month. Given an average monthly salary of almost $2,500, plus monthly hotel, meal, and transportation expenses of almost $650 for irregular operations, the cost for a flight attendant would be about $3,100 per month, or $1.3 million annually.

The commenter also stated that they do not have a deplaning period. That is, pay and expenses cease at the block-in time of the last flight in the duty period for the trip. This commenter calculates that the cost of a 15-minute deplaning period would result in the hiring of 20 additional flight attendants. The cost would amount to $749,000 annually.

Finally, the commenter provided information documenting the carrier's one-time cost of computer software changes, including recordkeeping. The only additional information is that the cost of programming and testing per man-hour is $40.

FAA Response

The FAA received clarification from the commenter stating that "An Ad Hoc Computer Program was developed to search through our crew tracking systems to identify irregular operations that had occurred that would have required crew replacement under the NPRM." The commenter also stated that the NPRM "Would require crew replacement." Finally, the commenter stated that they used an average crew of four flight attendants in their calculations, which implies that they were replacing their existing crew. This leads the FAA to assume that the commenter did not consider crew augmentation. However, the FAA did use some of the salary and cost data provided by the commenter.

With regard to hiring additional flight attendants for a 15-minute deplaning period, the FAA notes that there

is no new requirement in this rule concerning deplaning; deplaning of the aircraft is a current requirement.

Small Operators

Sun Country Airlines operates a fleet of 10 aircraft with 520 employees, 170 of whom are flight attendants. Based on 1992 operations, the proposed rule would have required the commenters to hire 34 additional flight attendants, which would have increased operating costs (i.e., salaries, benefits, costs of training, hotels, meals, deadhead travel, and general administrative overhead) by $2.6 million in 1992. However, this air carrier stated that, by applying crewmember flight, duty, and rest requirements to flight attendants, the air carrier would need to employ 20 additional flight attendants rather than 34 additional flight attendants, with increased operating costs of $1.75 million rather than $2.6 million. However, these lower costs still exceeded the entire 1992 new profit for this carrier.

The Regional Airline Association stated that the proposed rule would either require an additional jump seat in the cabin for which there is insufficient space or it would require that a passenger seat be set aside for the additional flight attendant. This commenter stated that daily or routine loss of a revenue seat on a fleet of regional aircraft with 20 to 50 seats would be enormous. It also pointed out the added costs associated of layover lodging, meals, and per diem, and the significant incremental weight of an added crewmember.

The National Air Carrier Association stated that the proposed rule would impose costs of approximately $372,000 in additional flight attendant staffing, and approximately $50,000 in recordkeeping.

FAA Response

The FAA received additional clarification from Sun Country indicating that the proposed rule would cost $2.6

million. The annual cost to deadhead flight attendants to their domicile would be $832,000. In addition, hotel accommodations would be $842,000, added per diem cost would be $308,000, initial and recurrent training would be $10,200, and administrative costs would be $58,000. Because this commenter does not have any interline agreements, it would have to pay the added costs for deadhead tickets. This commenter estimated that these costs would be $579,000.

Based upon this cost estimate, the cost per added flight attendant would be about $76,500 per flight attendant ($2.6 million divided by 34 additional flight attendants). If this commenter did not have to incur the costs for deadhead tickets, then the added costs would be $60,300 per flight attendant.

The commenter also provided information stating that the annual cost of applying the part 121 supplemental carrier pilot flight, duty, and rest requirements to flight attendants would be $1.75 million. The added cost of 20 flight attendants would be $489,000. Hotel expenses would be $673,000; per diem costs would be $244,000; training would cost $6,000; and administrative costs would be $34,000. Finally, the annual cost of deadheading flight attendants back to their place of domicile would be $289,000.

Based upon their total cost estimate, the cost per added flight attendant would be $1.75 million divided by 20 additional flight attendants, or about $87,000 per flight attendant. If this commenter did not have to incur the costs for deadhead tickets, then the added cost would be $72,600 per flight attendant.

The FAA contends that these cost estimates represent the costs associated with replacing the existing crew. The cost estimates do not appear to represent the costs associated with augmenting the existing crew with additional flight attendants. An air carrier whose goal is profit maximization and cost minimization would choose the least

costly means of achieving compliance with the proposed rule, and, in most cases, that appears to be the crew augmentation option.

RAA asserted that the final rule would impose costs based on the fact that some aircraft would fly longer than 14 hours and full. The FAA contacted this commenter and asked a clarifying question on the number of times that an aircraft would fly more than 14 hours full. The commenter was unable to provide information to substantiate this assertion, and therefore, while a problem may exist, the FAA is unable to determine the magnitude of it.

The FAA received additional information from a NACA member (American Trans Air) stating that, to calculate annual costs, they multiplied the average number of block hours in the fleet by the percentage of flight hours the NPRM is expected to affect. The product is the total number of affected block hours.

The number of affected block hours was then divided by the expected number of flight attendant utilization hours, which varies by aircraft type, and multiplied by the number of flight attendants to compute crew requirements. Based on this calculation, 20 additional flight attendants would be needed to meet the requirements of the proposed rule. This commenter then multiplied the number of additional flight attendants by their annual salary, including fringe benefits and training, to arrive at a cost estimate of $372,000. Administrative costs of $80,000 were added.

The FAA received additional clarification that the percentage of flight hours was based upon the commenter's examination of all flights that exceeded 14 hours. The commenter did not look at flights of 14 to 16 hours, 16 to 18 hours, or 18 to 20 hours.

The commenter divided the number of affected block hours by the expected flight attendant utilization hours

(Boeing 727, 60 hours; Boeing 757 and Lockheed L-1011, 56 hours). The commenter did not know how many duty periods this represented. After multiplying this number by the number of flight attendants needed to complete crew requirements, the commenter concluded that 20 additional flight attendants would be needed to augment its flights.

The $13,000 annual salary represents a flight attendant's first-year salary without overtime. The 20 percent benefits estimate represents the company's portion of employee benefits.

To the extent practicable, the cost information provided by commenters was used to revise the cost estimates in the final regulatory evaluation.

Recordkeeping Costs

Several commenters provided the FAA with information on recordkeeping. The Air Transport Association estimated that air carriers would incur a one-time expense for computer system program modifications of $2.0 million to $3.0 million. Delta Air Lines stated that the one-time cost of software computer changes, including recordkeeping, would be $367,200. American Trans Air, a member of the National Air Carrier Association, stated that administrative costs would be $80,000, approximately $54,000 of which would be the cost to program and upgrade software, and $26,000 of which would be the cost of data entry and associated labor.

FAA Response

Because of limited supporting documentation, a wide variation between commenters' estimates, and the difficulty of ascertaining what portion of the recordkeeping costs could be attributed to the implementation of this final rule versus the cost to upgrade current systems, the FAA stands by its original recordkeeping cost estimate.

Summary of Benefits and Costs

The FAA estimates that the cost of compliance with the requirements of the final rule will be $42.7 million, discounted.

Although benefits cannot be quantified, the FAA concludes that the establishment of flight attendant duty period limitations and rest requirements are warranted, because they will contribute to an overall enhancement of transport category airplane safety and utility that will both promote and enhance the U.S. air transportation system.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA.

The fleet size for an operator of aircraft for hire to be considered a small entity is nine or fewer aircraft. The threshold annualized cost levels for operators of aircraft for hire in 1993 dollars are $117,800 for scheduled operators whose fleets have aircraft with seating capacities of more than 60, $67,000 for scheduled operators whose fleets have aicraft with seating capacities of 60 or less (other scheduled operators), and $4,570 for unscheduled operators. The proposals in the NPRM would affect air carriers that provide passenger-carrying operations in aircraft for which flight attendants are required. Other types of aviation companies would not be affected. A "substantial number" of small entities is a number that is not less than 11 and that is more than one-third of the small entities subject to this rule.

According to FAA records of small entity air carriers that provide passenger-carrying operations in aircraft that require flight attendants, there are 23 part 125 and 135 operators that could be affected by the final rule. Of these 23 operators, 7 are part 121/135 operators, 12 are part 125 operators, and 4 are part 135 operators. The affected operators are those with nine or fewer aircraft. At least one of the aicraft that they own have a seating configuration of more than 19 as described in either § 125.269 or § 135.107 and therefore would have at least one flight attendant on board. There are also 8 part 121 operators that would be affected by the final rule. In July 1993, there were a total of 25 part 121/135 operators, 39 part 125 operators, and 3,040 part 135 operators. There are also more than 100 part 121 operators. The number of carriers that could be affected by the rule does not exceed one-third of the total number of carriers in any of the four categories of operators (parts 121, 121/125, 125 and 135). The FAA has therefore determined that a regulatory flexibility analysis is not necessary.

International Trade Impact Statement

This final rule would not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States.

The FAA has determined that the amendments to parts 121 and 135 will not have a significant impact on international trade. The final rule is not expected to have an impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States. This finding is based in large part upon the review of foreign civil aviation regulations governing flight attendant flight and duty time practices and minimum rest requirements found in the Industry Study as well as information supplied by commenters to the public docket.

The Industry Study review shows that 23 countries, including Argentina, Belgium, Brazil, Denmark, the Netherlands, France, Norway, Portugal, Sweden, Switzerland, and West Germany, have government regulations on flight attendant flight and duty times and rest periods.

The comment provided by the Flight Attendants states that the European Community, through its Joint Aviation Authority (JAA) "is poised to issue flight attendant duty time and rest provisions which would be based on state of the art research concerning work schedules and fatigue." They state that the JAA rules would base duty time and rest limits on the time or departure and the number of segments flown.

On the other hand, the Industry Study noted that 24 countries, including Australia, Canada, Greece, Ireland, Italy, Japan, and Mexico, do not regulate flight attendant work time.

The FAA concludes that there are many countries with flight attendant flight and duty times and rest periods and many countries without these regulations. Second, many firms in the United States appear to be already in compliance or near compliance with the final regulation. Therefore, the FAA has determined that the amendments to parts 121, 125, and 135, will not have a significant impact on international trade.

Federalism Implications

The regulation herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this regulation is a significant regulatory action under Executive Order 12866. In addition, the rule is considered significant under DOT Regulatory Policies and Procedures. However, the FAA has determined that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities or on international trade. A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

Paperwork Reduction Act Approval

Sections 121.683(a)(1), 135.63(a)(3), 135.63(a)(4)(x), 135.63(a)(5), and 135.63(b) are not effective until the OMB has approved the Paperwork Reduction Requirements. The FAA will publish a document in the Federal Register following OMB approval of the Paperwork Reduction Requirements.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Hours of work, Pilots, Reporting and recordkeeping requirements, Safety.

14 CFR Part 125

Aircraft, Airmen, Airplanes, Aviation safety, Hours of work, Pilots.

14 CFA Part 135

Air carriers, Aircraft, Airmen, Airplanes, Aviation safety, Hours of work, Pilots, Reporting and recordkeeping requirements, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 121, 125, and 135 of the Federal Aviation Administration (14 CFR parts 121, 125, and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. The heading for subpart P is revised to read as follows:

Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers; Flight Attendant Duty Period Limitations and Rest Requirements: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators

3. Section 121.461 is revised to read as follows:

§ 121.461 Applicability.

This subpart prescribes—

(a) Qualifications and duty time limitations for aircraft dispatchers for domestic and flag air carriers; and

(b) Duty period limitations and rest requirements for flight attendants used in air transportation by domestic, flag, and supplemental air carriers, and in air commerce by commercial operators.

4. Section 121.467 is added to subpart P to read as follows:

§ 121.467 Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental air carriers and commercial operators.

(a) For purposes of this section—

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the domestic, flag, or supplemental air carrier or commercial operator. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

Flight attendant means an individual, other than a flight crewmember, who is assigned by a domestic, flag, or suppelmental air carrier or commercial operator, in accordance with the required minimum crew complement under the certificate holder's operations specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin-safety-related responsibilities.

Rest period means the period free of all restraint or duty for a domestic, flag, or supplemental air carrier or commercial operator and free of all responsibility for work or duty should the occasion arise.

(b) Except as provided in paragraph (c) of this section, a domestic, flag, or supplemental air carrier or com-

mercial operator may assign a duty period to a flight attendant only when the applicable duty period limitations and rest requirements of this paragraph are met.

(1) Except as provided in paragraphs (b)(4), (b)(5), and (b)(6) of this section, no domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 14 hours.

(2) Except as provided in paragraph (b)(3) of this section, a flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b)(1) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(3) The rest period required under paragraph (b)(2) of this section may be scheduled or reduced to 8 consecutive hours if the flight attendant is provided a subsequent rest period of at least 10 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(4) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least one flight attendant in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(5) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 16 hours, but no

more than 18 hours, if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least two flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(6) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 18 hours, but no more than 20 hours, if the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, and if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least three flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the domestic aid carrier's or the commercial operator's operations specifications.

(7) Except as provided in paragraph (b)(8) of this section, a flight attendant scheduled to a duty period of more than 14 hours but no more than 20 hours, as provided in paragraph (b)(4), (b)(5), and (b)(6) of this section, must be given a scheduled rest period of at least 12 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(8) The rest period required under paragraph (b)(7) of this section may be scheduled or reduced to 10 consecutive hours if the flight attendant is provided a subsequent rest period of at least 14 consecuitve-hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(9) Notwithstanding paragraphs (b)(4), (b)(5), and (b)(6) of this section, if a domestic, flag, or supple-

mental air carrier or commercial operator elects to reduce the rest period to 10 hours as authorized by paragraph (b)(8) of this section, the air carrier or commercial operator may not schedule a flight attendant for a duty period of more than 14 hours during the 24-hour period commencing after the beginning of the reduced rest period.

(10) No domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant any duty period with the air carrier or commercial operator unless the flight attendant has had at least the minimum rest required under this section.

(11) No domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to perform any duty with the air carrier or operator during any required rest period.

(12) Time spent in transportation, not local in character, that a domestic, flag, or supplemental air carrier or commercial operator requires of a flight attendant and provides to transport the flight attendant to an airport at which that flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home station, is not considered part of a rest period.

(13) Each domestic, flag, or supplemental air carrier must relieve each flight attendant engaged in air transportation and each commercial operator must relieve each flight attendant engaged in air commerce from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

(14) A flight attendant is not considered to be scheduled for duty in excess of duty period limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations but due to circumstances beyond the control of the domestic, flag, or supplemental air carrier or commercial operator (such as adverse weather conditions) are not at the time

of departure expected to reach their destination within the scheduled time.

(c) Notwithstanding paragraph (b) of this section, a domestic, flag, or supplemental air carrier or commercial operator may apply the flight crewmember flight time and duty limitations and rest requirements of this part to flight attendants for all operations conducted under this part provided that—

(1) The certificate holder establishes written procedures that—

(i) Apply to all flight attendants used in the certificate holder's operation:

(ii) Include the flight crewmember requirements contained in subparts Q, R, or S of this part, as appropriate to the operation being conducted, except that rest facilities on board the aircraft are not required;

(iii) Include provisions to add one flight attendant to the minimum flight attendant complement for each flight crewmember who is in excess of the minimum number required in the aircraft type certificate data sheet and who is assigned to the aircraft under the provisions of subparts Q, R, and S, as applicable, of this part;

(iv) Are approved by the Administrator and are described or referenced in the certificate holder's operations specifications; and

(2) Whenever the Administrator finds that revisions are necessary for the continued adequacy of the written procedures that are required by paragraph (c)(1) of this section and that had been granted final approval, the certificate holder must, after notification by the Administrator, make any changes in the procedures that are found necessary by the Administrator. Within 30 days after the certificate holder receives such notice, it may file a petition to reconsider the notice with the FAA Flight Standards District Office that is charged with the overall inspec-

tion of the certificate holder's operations. The filing of a petition to reconsider stays the notice, pending decision by the Administrator. However, if the Administrator finds that an emergency requires immediate action in the interest of safety, the Administrator may, upon a statement of the reason, require a change effective without stay.

5. Section 121.683 is amended by revising paragraph (a)(I) to read as follows:

§ 121.683 Crewmember and dispatcher record.

(a) * * *

(1) Maintain current records of each crewmember and each aircraft dispatcher (domestic and flag air carriers only) that show whether the crewmember or aircraft dispatcher complies with the applicable sections of this chapter, including, but not limited to, proficiency and route checks, airplane and route qualifications, training, any required physical examinations, flight, duty, and rest time records; and

* * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

6. The authority citation for part 125 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1354, 1421 through 1430, and 1502.

7. Section 125.37 is amended by revising the heading and paragraph (a) to read as follows:

§ 125.37 Duty period limitations.

(a) Each flight crewmember and flight attendant must be relieved from all duty for at least 8 consecutive hours during any 24-hour period.

* * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

8. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-499, January 12, 1983).

9. Section 135.63 is amended by revising paragraphs (a)(3) and (a)(4)(x), adding new paragraph (a)(5), and revising paragraph (b) to read as follows:

§ 135.63 Recordkeeping requirements.

(a) * * *

(3) A current list of the aircraft used or available for use in operations under this part and the operations for which each is equipped;

(4) * * *

(x) The date of the completion of the initial phase and each recurrent phase of the training required by this part; and

(5) An individual record for each flight attendant who is required under this part, maintained in sufficient detail to determine compliance with the applicable portions of § 135.273 of this part.

(b) Each certificate holder must keep each record required by paragraph (a)(3) of this section for at least 6 months, and must keep each record required by paragraphs (a)(4) and (a)(5) of this section for at least 12 months.

* * * *

10. Subpart F is amended by revising the heading to read as follows:

Subpart F—Crewmember Flight Time and Duty Period Limitations and Rest Requirements

11. Section 135.261 is amended by revising the introductory text of the section and by adding a new paragraph (e) to read as follows:

§ 135.261 Applicability.

Sections 135.263 through 135.273 of this part prescribe flight time limitations, duty period limitations, and rest requirements for operations conducted under this part as follows:

* * * *

(e) Section 135.273 prescribes duty period limitations and rest requirements for flight attendants in all operations conducted under this part.

12. Section 135.273 is added to Subpart F to read as follows:

§ 135.273 Duty period limitations and rest time requirements.

(a) For purposes of this section—

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

Flight attendant means an individual, other than a flight crewmember, who is assigned by the certificate holder, in accordance with the required minimum crew complement under the certificate holder's operations specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin-safety-related responsibilities.

Rest period means the period free of all responsibility for work or duty should the occasion arise.

(b) Except as provided in paragraph (c) of this section, a certificate holder may assign a duty period to a flight attendant only when the applicable duty period limitations and rest requirements of this paragraph are met.

(1) Except as provided in paragraphs (b)(4), (b)(5), and (b)(6) of this section, no certificate holder may assign a flight attendant to a scheduled duty period of more than 14 hours.

(2) Except as provided in paragraph (b)(3) of this section, a flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b)(1) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(3) The rest period required under paragraph (b)(2) of this section may be scheduled or reduced to 8 consecutive hours if the flight attendant is provided a subsequent rest period of at least 10 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(4) A certificate holder may assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the certificate holder has assigned to the flight or flights in that duty period at least one flight attendant in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(5) A certificate holder may asign a flight attendant to a scheduled duty period of more than 16 hours, but

no more than 18 hours, if the certificate holder has assigned to the flight or flights in that duty period at least two flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(6) A certificate holder may assign a flight attendant to a scheduled duty period of more than 18 hours, but no more than 20 hours, if the scheduled duty period includes one or more flights that land or take off outside the 48 contiguous states and the District of Columbia, and if the certificate holder has assigned to the flight or flights in that duty period at least three flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(7) Except as provided in paragraph (b)(8) of this section, a flight attendant scheduled to a duty period of more than 14 hours but no more than 20 hours, as provided in paragraphs (b)(4), (b)(5), and (b)(6) of this section, must be given a scheduled rest period of at least 12 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(8) The rest period required under paragraph (b)(7) of this section may be scheduled or reduced to 10 consecutive hours if the flight attendant is provided a subsequent rest period of at least 14 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(9) Notwithstanding paragraphs (b)(4), (b)(5), and (b)(6) of this section, if a certificate holder elects to reduce the rest period to 10 hours as authorized by paragraph (b)(8) of this section, the certificate holder may not schedule a flight attendant for a duty period of more

than 14 hours during the 24-hour period commencing after the beginning of the reduced rest period.

(10) No certificate holder may assign a flight attendant any duty period with the certificate holder unless the flight attendant has had at least the minimum rest required under this section.

(11) No certificate holder may assign a flight attendant to perform any duty with the certificate holder during any required rest period.

(12) Time spent in transportation, not local in character, that a certificate holder requires of a flight attendant and provides to transport the flight attendant to an airport at which that flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home station, is not considered part of a rest period.

(13) Each certificate holder must relieve each flight attendant engaged in air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

(14) A flight attendant is not considered to be scheduled for duty in excess of duty period limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions) are not at the time of departure expected to reach their destination within the scheduled time.

(c) Notwithstanding paragraph (b) of this section, a certificate holder may apply the flight crewmember flight time and duty limitations and rest requirements of this part to flight attendants for all operations conducted under this part provided that—

(1) The certificate holder establishes written procedures that—

(i) Apply to all flight attendants used in the certificate holder's operation;

(ii) Include the flight crewmember requirements contained in subpart F of this part, as appropriate to the operation being conducted, except that rest facilities on board the aircraft are not required; and

(iii) Include provisions to add one flight attendant to the minimum flight attendant complement for each flight crewmember who is in excess of the minimum number required in the aircraft type certificate data sheet and who is assigned to the aircraft under the provisions of subpart F of this part, as applicable.

(iv) Are approved by the Administrator and described or referenced in the certificate holder's operations specifications; and

(2) Whenever the Administrator finds that revisions are necessary for the continued adequacy of duty period limitation and rest requirement procedures that are required by paragraph (c)(1) of this section and that had been granted final approval, the certificate holder must, after notification by the Administrator, make any changes in the procedures that are found necessary by the Administrator. Within 30 days after the certificate holder receives such notice, it may file a petition to reconsider the notice with the FAA Flight Standards District Office that is charged with the overall inspection of the certificate holder's operations. The filing of a petition to reconsider stays the notice, pending decision by the Administrator. However, if the Administrator finds that there is an emergency that requires immediate action in the interest of safety, the Administrator may, upon a statement of the reasons, require a change effective without stay.

Issued in Washington, D.C. on August 15, 1994.

David R. Hinson,
Administrator.

[FR Doc. 94-20372 Filed 8-16-94; 12.44 pm]

BILLING CODE 4910-13-M

APPENDIX C

[Filed Jul. 28, 1995]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1611 September Term, 1994

SUN COUNTRY AIRLINES, INC.,
Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION,
Respondent.

BEFORE: Edwards, Chief Judge; Buckley and Tatel, Circuit Judges

ORDER

Upon consideration of petitioner's petition for rehearing filed July 14, 1995, it is

ORDERED, by the Court, that the petition is denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By: Robert A. Bonner
ROBERT A. BONNER
Deputy Clerk

APPENDIX D

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C. 20591

Regulatory Docket No. 24397

In the matter of the petition of
THE ASSOCIATION OF FLIGHT ATTENDANTS

AND

THE JOINT COUNCIL OF FLIGHT ATTENDANT UNIONS
to amend Parts 121 and 135 of the
Federal Aviation Regulations

DENIAL OF PETITION

By letter dated December 19, 1984, The Association of Flight Attendants (AFA) 1625 Massachusetts Avenue, N.W., Washington, D.C. 20036 and by letter dated April 23, 1985, the Joint Council of Flight Attendant Unions (JCFA), 611 Fillmore Street, Pasadena, California 91106, petitioned for amendments to Parts 121 and 135 of the Federal Aviation Regulations (FAR). The petitioners asked for flight and duty time limitations and rest requirements for flight attendants engaged in passenger-carrying operations. JCFA requested that the FAA handle the two petitions separately because the petitions recommend separate approaches to establishing flight time limits for flight attendants. However, the FAA determined that since both petitions address the same issue, they should be considered together. Therefore, the FAA included both petitions in the same public docket and published notices in the Federal Register asking for comments on both petitions.

Sections of the FAR affected:

Subparts Q, R and S of Part 121 and Subpart F of Part 135 prescribe flight time limitations and rest requirements for flight crewmembers (pilot, flight engineers and flight navigators) engaged in the conduct of aircraft operations under Part 121 and 135, respectively.

The petitioners' supportive information is as follows:

The AFA petition chose the existing pilot rules as the benchmark for its proposal. Specifically, the AFA petition would add flight attendants to the applicability of current regulations that contain flight time limitations and rest requirements for flight crews. However, the petition states that AFA would not agree to longer than 8 hours of daily flight time in a single duty period or less than 9 hours for any rest period.

With respect to costs, AFA states that since many "unions have contracts that are superior to the pilot flight and duty time rules as they now exist, it is not clear that this proposal will have major impact on the industry." Concerning benefits, AFA asserts that its proposal would "ensure that flight attendants are rested enough to perform safely in an emergency . . ." AFA also states that it is "not in a position to estimate the number of deaths or injuries that would be prevented by adoption of this proposal since National Transportation Safety Board investigations have not focused on flight attendant fatigue in analyzing emergency evacuations."

The JCFA petition recommends establishment of maximum duty time limitations and minimum hours of rest for flight attendants. Overall limitations proposed by the JCFA are:

1. Maximum of 14 or less scheduled duty hours for flag operations based on the number of flight segments and the time of day with an exception allowed for long-range flights.
2. Maximum of 13 or less scheduled duty hours for domestic operations based on the number of flight segments and the time of day.
3. Maximum of 200 duty hours monthly.
4. Maximum of 2000 duty hours yearly.
5. Minimum release-to-report rest periods as follows:

- 10 hours at a domestic layover point.
- 14 hours at a flag layover point.
- 12 hours at domicile (both domestic and flag).

6. Minimum number of 24-consecutive-hour rests at domicile each month: 8 for domestic and 10 for flag.
7. At least one 24-consecutive-hour rest period each 7 consecutive days.

JCFA states that the proposals were designed to minimize both short term and cumulative fatigue and to limit what it refers to as "transitory fatigue." JCFA states that its proposed changes are necessary "to assure and enhance safety in air commerce." The JCFA states that its proposal would not impose "undue operational and economical penalties on air carriers.

Summaries of the petitions were published in the *Federal Register* on February 14, 1985 (50 FR 6185), June 18, 1985 (50 FR 25252), and August 6, 1985 (50 FR 31724).

For the most part the comments received fall into two major categories. The AFA, the several individual unions that make up JCFA, and all of the individual flight attendants who responded, support the idea that some type of limit (flight time, duty time, minimum required rest, or some combination of these three) be established for flight attendants. The main argument for establishing such limits is that without limits a certificate holder can require its flight attendants to fly until they are physically and mentally exhausted and, therefore, unable to provide the expected level of passenger safety.

In addition to the comments from individual flight attendants and their organizations, support for rulemaking was also expressed by the National Transportation Safety Board, the Air Line Pilots Association, the International Airline Passengers Association, the Director of Aerospace Medicine at Wright State University, and a number of members of Congress. In general, while not citing any studies directly related to flight attendants duties, the commenters argued that fatigue does have an impact on performance and that flight attendants perform an important safety function.

The comments opposing the initiation of rulemaking were those received from the Air Transport Association, People Express (now absorbed by Continental Airlines), and the National Air Carrier Association. The thrust of these comments is that no safety basis exists for any rulemaking action by the FAA and that if a problem exists it is a labor/management problem which should be resolved by labor and management. People Express further states that any rulemaking action by the FAA would "undermine the letter and spirit of the Airline Deregulation Act by severely restricting the operations of the airlines without a proper showing that the regulations would further the interest of public safety."

The FAA's analysis/summary is as follows:

> The FAA has analyzed the petitions for rulemaking submitted by AFA and JCFA and all comments received in response to three separate publications of summaries of the petitions in the *Federal Register*. The FAA finds that the information, views, and arguments contained in the two petitions do not warrant the action sought.
>
> The AFA proposal for a maximum of 8 hours of daily flight time in a single duty period is more stringent than certain maximum times of the flight crewmember flight time limitations in our rules. Likewise, the AFA proposal to require no less than a 9 hour rest period for flight attendants is also more stringent than the rest requirements permitting a reduced rest period of 8 hours and a subsequently longer compensatory rest period for flightcrews. AFA provides no safety justification for more stringent daily flight time limitations and daily minimum rest requirements for flight attendants than the current rules applicable to flight crewmembers.
>
> As acknowledged by petitioners and commenters, there is no empirical evidence that shows any correlation between flight attendant duty time, flight attendant safety duties, and risk to passengers. For that reason there is no reasonable method to determine requirements for cost beneficial flight attendant duty time that are directly related to safety. There is no showing that the unrelated instances cited in a few comments of lengthy flight attendant duty time either were the result of work rules mandated by the company, or were systemic throughout the industry. Nor was there a showing that these instances had an adverse impact on safety. The cost to the carriers of administering the proposed rules and to the FAA in enforcing them, thus cannot be justified based on any empirical or reasonably estimated safety benefit.

The petitioners stated to the contrary that many labor contracts now have provisions requiring the limitations sought through government action.

In consideration, of the foregoing, I find that rulemaking, as proposed, is not in the public interest. Therefore, pursuant to the authority contained in Sections 313(a) and 601(c) of the Federal Aviation Act of 1958, the petition of The Association of Flight Attendants and the petition of The Joint Council of Flight Attendant Unions to provide flight and duty time limitations and rest requirements for flight attendants engaged in passenger-carrying operations conducted under Parts 121 and 135 of the Federal Aviation Regulations are denied.

/s/ T. Allan McArtor
T. ALLAN MCARTOR
Administrator

Issued in Washington, D.C., on January 23, 1989.

APPENDIX E

FLIGHT ATTENDANT DUTY TIME LIMITATIONS

(102-3)

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

H.R. 14

TO AMEND THE FEDERAL AVIATION ACT OF 1958 TO PROVIDE FOR THE ESTABLISHMENT OF LIMITATIONS ON THE DUTY TIME FOR FLIGHT ATTENDANTS

MARCH 13, 1991

Printed for the use of the
Committee on Public Works and Transportation

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1991

TESTIMONY OF ANTHONY J. BRODERICK, ASSOCIATE ADMINISTRATOR FOR REGULATION AND CERTIFICATION, FEDERAL AVIATION ADMINISTRATION, WASHINGTON, DC

Mr. BRODERICK. Mr. Chairman and members of the subcommittee, good morning. I welcome the opportunity to appear before the subcommittee today on the topic of flight attendant duty time limitations.

A little less than two years ago, I appeared before you, shortly after the FAA denied petitions from the flight attendant unions seeking establishment of regulatory limitations on duty time. You will recall that the FAA denied the petitions in 1989, citing "a lack of concrete evidence showing any correlation between flight attendant duty, flight attendant safety duties, and risk to passengers."

I told you at that time that our decision not to consider rulemaking was based not on a lack of concern about the issue, but a lack of data. We simply did not have a complete or accurate picture of the real world of duty scheduling in which flight attendants operated—what their work schedules were like, whether extra hours worked were because employees sought compressed work schedules or extra hours, whether heavy work schedules were common or aberrations. Little data had been presented during the pendency of the petitions for rulemaking on which to base an objective judgment.

I announced at that hearing that the FAA would vigorously pursue data on flight attendant work schedules and that we would keep you apprised. We have done both of those things. As I committed, we conducted an extensive survey of industry scheduling practices, prepared a report documenting what we found, and have worked to keep you and your staff apprised of our efforts along the way.

Our report on the study of "Current Industry Practice: Flight Attendant, Flight Duty, and Rest Times" reflected a review of current air carrier industry scheduling practices and actual work hours of flight attendants. The

study targeted longer than average duty days, below minimum rest periods, and instances of long flight hours. Certain segments of the industry—actually, one segment —were found to encounter flight attendant duty hour problems more frequently than others because of the nature of their operations, although these problems were by no means prevalent.

One statement I made at the hearing was that we were going to try and develop a data base that will convince all of us of the correctness of whatever decision we need to make as a result of that, and it will be there in black and white. That was my goal. Unfortunately, what we have found is not black and white. The preponderance of flight attendant schedules appear to be well within a zone of reasonableness. Some occasional work practices, on the other hand, appear to be excessive. The data are not dispositive, however.

Moreover, the dilemma that we see is that while the cost of recordkeeping alone if duty limits were imposed would total more than $1 million each year, there are no readily quantifiable safety benefits that we can identify to offset the cost. This is a fact which we noted in denying the flight attendant union positions, and it remains undisputed today.

Data from 1975 through 1989 showed that approximately 38,000 air carrier passengers and several thousand additional crew were aboard aircraft involved in evacuation or evacuation-related occurrences. We have been unable to identify a single incident in that array, however, that fairly could be said to have adversely been affected by flight attendant fatigue. In other words, the data do not identify flight attendant fatigue as a factor.

As you know, the regulatory process today is governed by a variety of legislative and legal requirements mandating that we evaluate and balance costs and benefits—impacts on small business, paperwork burdens, and the like. In this instance, based on the absence of demonstrable, quantifiable benefits to the traveling public that would offset the clear costs of a rule, the Administration

has concluded that rulemaking is not warranted. I want to stress, however, that this does not mean that we do not place a high value on the safety role of flight attendants or that we in the FAA are unconcerned about the issue or that it's a closed book.

To the contrary, we believe it's important to stress with industry the need for appropriate attention to flight attendant scheduling. We're developing an advisory circular that will be widely distributed in the industry, outlining our study findings and what we believe is appropriate scheduling of flight attendant duty time. Should research results or other data suggest in the future that a regulatory solution is appropriate, we will address that possibility after reviewing that data.

Before closing, Mr. Chairman, I'd like to state that the Administration strongly opposes the enactment of H.R. 14, which is pending before the subcommittee. Our analysis reflects that the enactment of this legislation, with its detailed scheduling requirements, would impose costs of more than $1 billion over a 15-year period on the airline industry. Discounted to 1989 dollars, this cost is still more than $550 million in 1989 dollars.

One of the main themes of the Public Works and Transportation Committee's recent aviation posture hearing was, of course, the difficult financial plight currently being experienced by U.S. carriers. An additional burden of more than $550 million in today's dollars on our airlines without a corresponding level of safety benefits would be a substantial undue financial drain on their resources and could serve to lessen their ability to shoulder high priority safety responsibilities. Costs under H.R. 14 would be incurred for additional hotel stays, flight delays, staffing requirements, positioning, training, et cetera.

As you know, H.R. 14 would require an air carrier to provide a flight attendant with at least 10 consecutive hours of rest after a duty period of 14 hours or less in domestic operations. The bill provides no means of ex-

tending the 14-hour duty period to contend with operational delays, nor does it provide any means of reducing the rest period. The bill's 10-hour domestic rest requirement could pose conflicts between flight attendant schedules and pilot schedules, in that pilots can be scheduled to receive as little as eight hours rest.

In closing, Mr. Chairman, I'd like to acknowledge that I appreciate the concerns you and other key members of the subcommittee have long had over the difficult issue of flight attendant duty time. Your personal commitment and that of your colleagues to aviation safety is to be commended. I look forward to continuing to work with you and the members of the subcommittee on the difficult challenge of improving the safety of our air transportation system, and I'd be pleased to respond to any questions you have.

[The full text of Mr. Broderick's prepared statement appears on page 87.]

Mr. OBERSTAR. Thank you very much, Mr. Broderick. I don't need to restate the extremely high regard in which I hold you professionally and personally for your work in aviation and for your commendable—that's even a paltry word to use—concern the safety and your advocacy for safety in every aspect of aviation, and for your command of the subject matter. But something has happened here in this area. There's a blind spot.

I just want to take you back to FAA's July 18, 1985, Final Rule for Flight Crew Members in the Federal Register. "Safety benefits are not specifically quantifiable due to a lack of detailed accident records. Specifically, accident records rarely address cumulative fatigue, which is the primary problem addressed by these amended standards." Now you're coming back and saying, "We can't impose a rule, because we haven't been able to quantify it"—that is, the issue of safety and fatigue in the case of flight attendants. You're saying that while it may be unquantifiable for the flight deck, it's important enough to do something nonetheless in 1985. In 1991, you come

back and say, "Well, because we can't quantify the benefits, we're not going to take the precautionary action."

In every aspect of aviation safety, FAA insists on a measure of redundancy, a back-up, in the wise and experienced-prompted knowledge that at four, five, six miles in the air, there is very little margin for error and that it is better to err, if one errs, on the side of safety. But in this area, the FAA says, "Because we can't quantify the safety benefit, we won't require an action to be taken."

So explain how safety is quantifiable in the flight deck but not quantifiable in the cabin.

Mr. BRODERICK. Mr. Chairman, the pilot flight duty time rules are a very complex array of regulations that have been in place for many decades. What is undisputed in the scientific community is that there are many studies that relate pilot performance, whether it be in actual airplane simulators or in other psychological testing device--you can relate actual pilot performance in controlling the airplane or controlling instruments that directly affect the safety of flight to fatigue of various types.

The regulation that you talked about was a relatively minor, in the scheme of things, amendment to the domestic flight and duty regulations for pilots. It was not the rule that established the pilot regulations for the first time, but merely an adjustment of existing regulations. I think it is difficult to compare the actual second-by-second control of an aircraft or any other complex machine to the duties of flight attendants.

There is a wide array of scientific literature that we have seen that relates certain duty time in the air to fatigue but then goes the next important and critical step—relating fatigue directly to performance of the job tasks for pilots. The kind of literature that we have for flight attendants relates to either a flight attendant in a few cases—or a shift worker, which is not directly applicable, in other cases—worked hours to fatigue. But

I know of no literature, no scientific evidence, no objective evidence of a non-scientific nature that relates the kind of fatigue we see from increased duty hours to safety of flight or safety of the passengers. It simply isn't there. We're talking about two different things when you talk about pilots and flight attendants in terms of what they do second by second.

Mr. OBERSTAR. Well, I don't think you need to be very arcane or philosophical to understand fatigue. Vince Lombardi once said, "Fatigue makes cowards of us all." He was talking about football players. In a larger sense, fatigue draws us down, takes that edge of competitiveness off, dulls our ability to respond decisively and instinctively and quickly and with sure judgment to situations. Let me repeat my wife's statement that it doesn't take an ounce of common sense to figure out that when you're tired you don't work as well as when you're alert and fresh.

And if you remember Galaxy Airlines, the first hearing I held on the subject of aviation as chairman of the Investigations and Oversight Subcommittee, the two flight attendants on board that aircraft had been on duty for 18 hours and were scheduled to work another seven. That almost violates the Slavery Act.

My five minutes are up, and the Chair will recognize the gentleman from Pennsylvania, Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

Thank you, Mr. Broderick. I share the Chairman's very high opinion of you and of the work that you do and of your dedication to improving safety standards throughout the industry, and I just regret that we have this disagreement on this issue.

In your testimony, you state that your analysis of the legislation shows that the detailed scheduling requirements would impose an additional cost to the airline industry of about $550 million over the next 15 years. You go on to say that without a corresponding level of safety benefits, this would be an undue financial burden on the

industry. I think we can understand that, given the problems the industry presently has.

Does this translate into approximately $37 million per year in additional costs for airlines?

Mr. BRODERICK. If I remember correctly, the number of $550 million is a discounted number, so that may be about right over a 15-year period in today's dollars. You really shouldn't do that kind of arithmetic with discounted dollars, but I think it's about $50 million a year actually nowadays.

Mr. CLINGER. Additional cost?

Mr. BRODERICK. Yes.

Mr. CLINGER. Also in your testimony, you indicate that this bill does not provide sufficient flexibility to extend the 14-hour duty period to deal with operational delays or other situations which might affect the length of the rest period—in other words, that it is too rigid in its requirements. In addition, the 10-hour domestic rest requirement may conflict with the pilot schedules, since they can be scheduled to receive as little as eight hours of rest under present law.

Would you be more inclined to support the legislation if we were to give you the flexibility to provide for these types of situations? In other words, is the objection to the specifics of the bill, or is the objection to doing anything at all in this area?

Mr. BRODERICK. I think the latter, Mr. Clinger. The difficulty that we have is that when you take a look at the data that we have seen on actual flight attendant duty scheduling or actual work hours, the vast majority of the industry has a tiny, tiny fraction of cases in which one sees scheduling or actual duty hours over, say, 14 hours to draw that line.

It's very difficult to see any benefit coming from regulating these major or national carriers—even the regionals, for that matter—and yet they would still have to pay all of the recordkeeping costs and any of the other costs that are associated with the particular duty regulation that

were enacted. Very little benefit would be associated with that. There would certainly be a greater reduction in fatigue in the supplemental carrier area, but again, the link between fatigue and job performance, safety performance, is something that is missing.

So it's a more general objection rather than a specific one.

Mr. CLINGER. You talk about the links missing, but isn't it very difficult to prove a connection? The connection may very well be there, but isn't it difficult to prove a connection between the fatigue that an attendant might be suffering and loss of life? It seems to me to be asking a bit much to have that measure of proof before you would go ahead with the regulation.

Mr. BRODERICK. Well, let's not look at something like loss of life, because as I've said before on this subject and others, we certainly don't require a body count to take regulatory action, but the Chairman mentioned earlier smelling smoke. It's not at all clear to me that someone who has worked for 14 hours or has been on duty for 14 hours smells smoke significantly more quickly than someone who has been on duty for only 12 or more slowly than one who has been on duty for more than 16 hours. And when you combine that with all of the mechanical devices that we have tried to add to aircraft to ensure that you don't have to rely on the human factor for something like smoke, I don't see the benefit documented for this.

I'm not talking about lives lost; I'm talking specifically about what is the benefit that we expect to achieve by, let's say for the sake of argument, reducing a domestic duty schedule from 15 hours to 14 hours? We see a cost associated with that. The cost can be significant. It can mean a canceled trip and hundreds of passengers staying overnight somewhere and being inconvenienced because of the inability to break a regulation. Additional flight attendants are required to support reduced duty times when you reduce flexibility, but I don't see the benefits associated from a safety viewpoint.

Mr. CLINGER. Well, I see my time has expired. Thank you, Mr. Chairman.

Mr. OBERSTAR. Mr. Mineta.

Mr. MINETA. Mr. Broderick, I can't believe what I'm hearing from you. Did you write your statement today?

Mr. BRODERICK. I worked with Mr. Randall to write it, sir.

Mr. MINETA. Who's Mr. Wrangle?

Mr. BRODERICK. Mr. Randall. Bert Randall, who is our Assistant Chief Counsel for Legislation.

Mr. MINETA. And does he have experience as a flight attendant?

Mr. BRODERICK. No, he doesn't.

Mr. MINETA. Do you?

Mr. BRODERICK. No, I don't.

Mr. MINETA. And I take it your statement was cleared by OMB?

Mr. BRODERICK. Yes, it went through the normal executive clearance process, sir.

Mr. MINETA. You know, I'm going to take issue with the Chairman of this committee and the ranking Republican. I though you were a professional person who could look at things objectively in terms of your duty and in terms of regulatory action. Knowing you and knowing of the conversations and the testimony I have heard from you for 17 years as a member of this subcommittee, eight years as its chairman, I don't know who is yanking your chain, but I cannot believe that you have come to this position in terms of this testimony based on what we have seen in past.

Now, you're saying right now that you can't, for instance, determine whether or not a person is going to be less able to smell smoke because of 16 hours of duty as compared to a person who's two hours on duty, and you don't have the statistics to back you up. Is that what you're saying?

Mr. BRODERICK. Yes, sir.

Mr. MINETA. Well, what about a person who's been on duty for 18 hours and has lightning strike on the air-

plane and is so tired or so awe-struck from that experience that they can't get out of their jump seat to open a door? That was the testimony as I can recall hearing as little as two years ago. There's nothing to say about the conversations that you and I have had when you said, "Norm, those regulations will be out next Friday"—you can deny it, that's fine, I'll buy that. You can deny it, there's no record of that. So all I know is I've been jerked around by you, and I don't appreciate it.

Now, you're saying that there is no data at all to back it up. Have you tried to bring that data to a close?

Mr. BRODERICK. Mr. Mineta, we've reviewed every bit of data that's been submitted by flight attendants and all of the data that is available to the scientists that we have—

Mr. MINETA. But that's like me saying that I have to ask you the right question to get a good answer out of you. I'm asking you have you done anything of an affirmative nature—

Mr. BRODERICK. In terms of literature review, yes. We haven't conducted—

Mr. MINETA. Are you just a depository for information?

Mr. BRODERICK. We haven't conducted independent studies, and frankly I'm not sure how to conduct an independent study, because I'm not sure what we'd measure. We certainly could try to relate fatigue to some performance, but then in actually conducting a study to determine effects of fatigue, you have to do what's called a double-blind test, in which neither the participants nor the people conducting the test know what's going on, and that's a very difficult thing to do with this.

Mr. MINETA. How is it you're able to do those investigative studies with a lot of investigative effort on flight deck personnel?

Mr. BRODERICK. Because we have simulators, and we know what we're measuring. We're measuring landing performance.

Mr. MINETA. Well, then doesn't that say to you that maybe their job is even more difficult?

Mr. BRODERICK. On the contrary, I would think perhaps it isn't as difficult. It doesn't require the kind of hand-eye coordination, constant motor control, controlling a ship second by second. If a flight attendant is inattentive for five seconds, it's not clear that that is going to cause a safety problem. Clearly, it's possible to do so with a pilot.

Mr. MINETA. But it may not be causal, but at the time of some incident, aren't you relying on that person to do something?

Mr. BRODERICK. You're relying on people to act in cases of emergency, with regard to their training, the way they are taught to act. Psychologists will tell us, human factors experts will tell us that it is not clear that in cases, where people are excited and in an emergency situation that small changes in things like duty time will adversely affect their performance.

Mr. MINETA. Well, then, Mr. Broderick, what is your definition of "benefit?"

Mr. BRODERICK. An improvement in safety or a reduction in hazard.

Mr. MINETA. And you say, "I don't see the benefit to be achieved."

Mr. BRODERICK. That's correct, the safety benefit to be achieved.

Mr. MINETA. And when you cite the cost to the airlines of what they might be subjected to, how do you measure the benefit? If you know the cost of what it may be to the airline, how do you then measure benefit? If you're looking at a cost-benefit study—I guess that's what you're getting at ——

Mr. BRODERICK. Well, that's correct. We do it like—for example, let's take aging aircraft or corrosion control or collision avoidance. The collision avoidance system—we've only had four mid-air collisions since 1971 in the last 20 years involving air carrier aircraft. That's not very many accidents. In the last couple of years, we've imposed regulations which are going to cost the industry

some $500 million between now and 1993 to avoid those accidents. We can quantify that benefit. That benefit is, if you will, avoiding one accident every five years.

Mr. MINETA. Well, the cost to the industry is minuscule as compared to the cost to the public and what we're investing in that air traffic control system for that safety benefit. But it seems to me that if you're going to make this argument that it's going to impose a cost of more than $1 billion over a 15-year period, it seems to me then we ought to be rolling back some of the other kinds of regulatory imposition that we make on the airline industry. Does that make sense?

Mr. BRODERICK. I certainly wouldn't want to reduce safety benefits that our current regulations provide in order to put in a regulation which has not identifiable safety benefit.

Mr. MINETA. Let me ask you, Mr. Broderick, do you think that these——

Mr. OBERSTAR. The gentleman's time has exipred.

Mr. MINETA. Do you think these people are there just for serving the food, then?

Mr. Broderick. Absolutely not. They're important members of the crew. They are—

Mr. MINETA. And yet you are not able to define what that safety benefit might be?

Mr. BRODERICK. I am not able to define a change in that safety benefit with a change in these duty regulations.

Mr. MINETA. Well, Mr. Chairman, I hope we might have an opportunity on the second round to pursue this. You know, when I look at Brazil, Chile, Columbia, Netherlands, Saudi Arabia, other countries that have a few flight attendants and they have maximum duty time limits, it seems to me that we are pretty much as enlightened as some of these other countries and that we ought to be in the minimum, if we are going to be leaders in the safety business, in the aviation business, that we ought to be doing the same.

Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentleman from Missouri, Mr. Hancock?

Mr. HANCOCK. A couple of quick questions. On this situation of the flight attendants living maybe two or three hours flight time from their duty assignment because of their place of residence, has this been considered? Has there been any effort on the part of either the unions or the flight attendants to at least consider a couple hours flight time before duty combined with 14 hours or whatever the flight time is, mean from a rest standpoint?

Mr. BRODERICK. Mr. Hancock, you raise a very important point. For maybe clear reasons, it has not been raised by proponents of duty time regulations, but it is something that we've considered. It's a very difficult thing to regulate off-duty activities of crews, whether they be pilots or flight attendants. One of the difficulties that we have with duty time regulation is that roughly one in four flight attendants actually commutes to work.

Now, when I say "commutes to work," I mean flying from one city to another and then beginning work. This is off-duty time. It's because they are based, for example, here in Washington and might work out of New York or Chicago or Dallas. They are adding some time to the beginning or end of their work day by commuting. It's not technically duty time, but it gives us pause, because I ask the question, "Well, if we're going to regulate duty time to, say, 14 hours, shouldn't we begin to consider not allowing people to have these long commutes at the beginning of a duty day?," and that gets into a tremendously complicated arrangement of regulatory intrusion on people.

It's very difficult to contemplate and it's one that causes us some pause in evaluating duty regulations.

Mr. HANCOCK. Well, I understand that one of the "fringe benefits" from an attendant's standpoint is that they can live in Florida and yet operate out of San Francisco, I suppose, or some other area. Frankly, it takes me

a few hours after that four-hour flight from my district to really get back on par.

Is there any other industry that allows their employees to live anyplace they want to in the United States and yet operate out of almost anyplace they want to, other than the airlines?

Mr. MINETA. Would my colleague yield on that? We Members of Congress do. [Laughter and applause.]

Mr. HANCOCK. Well, and if you would agree, I think that maybe that might be part of the problem. [Laughter.]

On that reference, I think that the gentleman from California made my point. Thank you very much.

Mr. OBERSTAR. The gentleman from Texas, Mr. Laughlin.

Mr. LAUGHLIN. I would point out to my friend from Missouri that the Constitution allows us to live where we desire.

Mr. Broderick, I must join with my Chairman of the Surface Transportation Committee in expressing my severe disappointment in your appearance today and in reading the words in this very disappointing document. Although I'm only in the start of my second term, I recall each of your occasions here, and you promised this subcommittee that there would be rules forthcoming from the FAA on this very subject matter.

And you may recall in a different hearing room, I told you I was sick and tired of telling flight attendants that I was on the Aviation Committee. Do you remember that?

Mr. BRODERICK. Yes, I do, sir.

Mr. LAUGHLIN. Just about a year ago, because you all would not come up with any rules or regulations on work standards, and I find it totally inhuman and unacceptable on your part to come in here and equate no deaths after 38,000 air carriers passengers have evacuated airplanes.

Now, the FAA has set hours that pilots can fly. Isn't that true?

Mr. BRODERICK. Yes sir.

Mr. LAUGHLIN. And there would be instances, wouldn't you agree, that they could actually fly longer and not have deaths occur? Wouldn't you agree with that?

Mr. BRODERICK. Yes, sir.

Mr. LAUGHLIN. But you restrict their hours for flying for safety reasons.

Mr. BRODERICK. Yes, sir.

Mr. LAUGHLIN. And have you had the occasion to sit in a cockpit?

Mr. BRODERICK. Yes, sir.

Mr. LAUGHLIN. Okay. Would you agree with me that the physical activity of flying an airplane with today's computers is not near as physical as the flight attendants work back in the cabin of pushing the carts around and helping the disabled and helping the senior citizens with their wheelchairs and braces, and the skiers who have casts on their legs? I have seen a number of patients who have had major surgery getting assistance from flight attendants. Would you agree with that?

Mr. BRODERICK. Yes, I would,

Mr. LAUGHLIN. Now, I want to know how many of these 38,000 evacuations occurred when the flight attendants were approaching the 14th hour of work on their work schedule?

Mr. BRODERICK. We have no idea, sir.

Mr. LAUGHLIN. In the skilled investigative techniques of your administration in the FAA, you all cannot determine that?

Mr. BRODERICK. No, records haven't been kept until very recently on things like that.

Mr. LAUGHLIN. So to rely on that would be to rely on untested information?

Mr. BRODERICK. Well, it represents the total array of every evacuation that's occurred in 15 years.

Mr. LAUGHLIN. You cannot with any degree of integrity tell this subcommittee, can you, Mr. Broderick,

that those evacuations occurred during the first two or three hours of work, or the last two or three hours of work, can you?

Mr. BRODERICK. No, I can't.

Mr. LAUGHLIN. So, they really don't mean anything, do they?

Mr. BRODERICK. I think, on the contrary, they do. The point that we were making there is that in every one—actually there were some 400 evacuations and some 38,000 passengers, and we've never had a report of anything adverse—not death or injury—anything adverse occurring because of fatigue associated with one of those evacuations.

Mr. LAUGHLIN. Have you ever been on an airplane that had to be evacuated?

Mr. BRODERICK. No, I never have.

Mr. LAUGHLIN. Nor have I, and I hope and pray to God I don't have to.

Mr. BRODERICK. They're very rare events.

Mr. LAUGHLIN. But given the choice, would you rather have a flight attendant, who has been on duty 2 hours or 14 hours, assisting you or a loved one.

Mr. BRODERICK. I don't know that it makes a difference, sir. In the case of an emergency, people are not clearly going to perform differently. What we're talking about is subtle differences, not the difference in whether or not you're able to actually perform a duty that you've been trained to do.

Mr. LAUGHLIN. Do you watch football?

Mr. BRODERICK. Once in a while.

Mr. LAUGHLIN. The winning pro teams don't run their star quarterback in heavy scrimmage and combat-type conditions on the training field on Friday and Saturday before the Sunday game, do they?

Mr. BRODERICK. I guess not.

Mr. LAUGHLIN. There is good reason for that, isn't there?

Now, the other thing I had a problem following you on, is this business about schedules. You remember you talked about flight attendant schedules? Well, they don't fly the airplane, do they?

Mr. BRODERICK. No, sir.

Mr. LAUGHLIN. Don't the pilots?

Mr. BRODERICK. Yes.

Mr. LAUGHLIN. And they have fewer hours, don't they?

Mr. BRODERICK. That's not clear. It depends upon what the situation is.

Mr. LAUGHLIN. That's right, because we don't count sitting time around the airport in between flights as work time, do we?

Mr. BRODERICK. Well, it's not flight time.

Mr. LAUGHLIN. For flight attendants?

Mr. BRODERICK. Well, this rule would. Yes, it would. That's part of the problem. Pilots are regulated, generally speaking, with regard to flight time. The proposed regulation called for in H.R. 14 is a duty time rule. It counts time sitting around the airport. Most of the time in long duty days, people are not actually in flight. The problems arise when you have on-the-ground delays where they're not pushing carts or assisting the elderly, but they're in fact sitting around the airport waiting for a flight to take off.

Mr. LAUGHLIN. If the Chairman will bear with me for one more question—I realize my time is up.

Mr. Broderick, I understood you to say that one of the reservations you and the FAA, and whoever jerked your chain to write this report, had was the expense to the airlines for this new recordkeeping, if we had different hours for the flight attendants. Did I follow you on that?

Mr. BRODERICK. That's correct.

Mr. LAUGHLIN. Don't they keep hours now on what the flight attendants work?

Mr. BRODERICK. No, that's one of the things that our study found. They keep payroll records, but they don't

consistently report flight time or duty time or rest time. They would have to create an entire new and very large recordkeeping system, the cost of which we estimate at about a million dollars a year.

Mr. LAUGHLIN. Well, don't they pay these people by the hour or by the trip?

Mr. BRODERICK. Yes, but the records are not uniform in a way that you can analyze them, as our studies showed. That's not controversial; that's a clear statement. We would have to have a standardized new industry-wide recordkeeping system created. It doesn't today exist.

Mr. LAUGHLIN. I find that unacceptable, Mr. Broderick. In this day of computers and when we can do so many wonderful things on a computer like log in when we're reaching a maximum use on a piece of equipment or things like that. So I thank you for your appearance.

In my close, I will tell you in response to your close, that I find your presentation totally unacceptable and your opposition to this bill unacceptable. Thank you very much.

Mr. OBERSTAR. The gentleman's time has expired.

The gentleman from Kansas, Mr. Nichols.

Mr. NICHOLS. The question I guess, Mr. Broderick, I would have as in connection—we've heard it referred to before about the other countries that have rules established regulating flight attendant. How do you answer the criticism that approximately 24 countries have promulgated these rules establishing the flight attendant time, and here we are still waiting?

Mr. BRODERICK. Virtually every one of those countries has flight attendant duty time rules that are similar to or modeled after pilot rules, which derive from the fact that the airlines are owned by the state. What you really see is, for example, United Airlines' operating rules becoming a State law. That's what happened in virtually all of those countries.

British Airways, for example, until recent times was a state carrier, so you had a state law which was really a work agreement. That was the way they ran the company, and because it was a state-owned company, it was a state law. That's what happened, then. When they privatized the company, the laws stayed the same. Just like some of the regulations governing National Airport when we sold National Airport and Dulles, or leased it.

So generally speaking—in fact, let me put it another way. I know of not a single safety analysis upon which any of those 23 or 24 sets of flight attendant duty regulations is based.

Mr. NICHOLS. Okay. So it's not an apt comparison, then, really, the way they're set up.

Mr. BRODERICK. I can't see it being an apt comparison at all. If you wanted to make a comparison, you'd have to say how many airlines have contracts or work rules of some kind that they follow compared to these other country laws.

Mr. NICHOLS. Okay. Now, if the airlines were required—since I come from a more rural area, Wichita, Kansas—if they were required to regulate the flight attendant duty time, what kind of an effect would this have? Would this be an adverse effect, as you see it, then, on rural communities and service to those?

Mr. BRODERICK. Well, one has to project, but clearly, at the end of the trip line, one of things that our study showed was that the regional carriers do have difficulty in rural areas. The reason they have difficulty is that the services are not always readily available to do maintenance or service the airplane as required, and one can envision two scenarios.

One, certainly a greater degree of lack of service at the end of long, thin rural routes because of the inability to continue a flight because the clock has run out on duty time. But I would expect that the airlines would also then reevaluate, because of the costs and the marginal return on some of these routes, whether or not just to

restructure the route to avoid the difficulties that they would run into and just eliminate service to some of the smaller cities. I don't see why they would not do that.

Certainly, if there were no law banning them from doing that, which there isn't, I think that's likely to happen. When you have marginal routes and increased costs that don't provide any benefit, and you can see a way to reduce the impact of these costs by eliminating a little bit of service which isn't profitable anyway, I would expect that kind of thing might occur.

Mr. NICHOLS. I think that finishes me. Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentleman from New Hampshire, Mr. Swett?

Mr. SWETT. Thank you, Mr. Chair. It's a pleasure to be able to serve on this committee with you, and I appreciate your bringing before us important legislation such as this for the examination of the conditions under which flight attendants have to serve, and I appreciate my colleague, Mr. Mineta, having sponsored this legislation.

It seems to me, Mr. Broderick, that you are being placed on a hot seat that probably is rightfully deserved, in listening to your testimony. I am hearing a number of things, not only at this subcommittee but at other subcommittee meetings and committee meetings in the Public Works and Transportation Department, which relate to the decline of the United States airline industry, and certainly the points being brought up in other meetings that I've attended and those brought up by my colleague, Mr. Laughlin, about the recordkeeping situation points out just one more example of why our airline industry is in the deplorable situation that it is in.

I don't think that this is something that should be left as a status quo item. It ought to be changed. I think that there are positive benefits to be derived just from establishing proper use of technology and recording proper work times for the employees of this industry, and I think that there are benefits to be derived.

You spoke about the situations in socialized companies —airlines that are owned by the state—as these kind of conditions being state laws. I would like to explore that a little further. You mentioned that as these companies that were owned by the states were privatized, that these rules and regulations were adopted in the private sector, and that was because of the fact that they were passed as state laws.

My question to you is would these rules in fact not have taken place, in your mind, had they not been established as laws? I'm not quite sure I could follow your reasoning on that.

Mr. BRODERICK. Well, the question was why do so many other countries have regulations that we don't, and I was pointing out that these national laws in other countries are really, as a general rule, the product of past or even present work contracts between employees and the employer. The employer is not a private company or likely was not a private company, but is in fact the government. So when you ask—

Mr. SWETT. But does that mean that the government has more concern for the safety of its employees than private corporations?

Mr. BRODERICK. No, what it means is that if you want to talk about—let's just pick Chile, for example. If you want to talk about the work rules that the government of Chile has negotiated with LAN Chile Airlines and compare that to the work regulations in the FAA, that's not a fair comparison. You really should look at United Airlines.

Mr. SWETT. Why is that not a fair comparison? I mean, the government is the employer in Chile; United Airlines is the employer in the United States. They both are operating airlines that meet similar situations.

Mr. BRODERICK. And United Airlines has work rules which are generally likely to be comparable to those of Chile.

Mr. SWETT. Where do they differ?

Mr. BRODERICK. I don't know. I would be happy to provide for the record a detailed comparison. It was in our study the kinds of work rules that these other countries have, but the question at hand, I think, is not United's work rules, but whether or not the Government should have work rules which overlay those of United Airlines.

Mr. SWETT. But my understanding is that these governments do address the situation that we're discussing this morning, which deals with fatigue factors and its impact on safety within the airline industry. Is that correct?

Mr. BRODERICK. They do as employers of those people, yes, sir.

Mr. SWETT. And so I believe that you can use that as a comparison where in the same type of industry, under certainly a different type of ownership, these issues are being addressed, where they are not in our industry. Is that a fair statement?

Mr. BRODERICK. No, if you make that comparison, I think you would find that our employers are addressing those issues, and they have done them in different ways, but generally speaking, the major and national carriers have work rules. The vast majority of flight attendants in the United States are covered today by industrial work rules. Contracts.

Mr. SWETT. Are there other industries in the United States that operate under these same broad rules?

Mr. BRODERICK. The aviation industry is unique in terms of labor regulations of hours of work because of the nature of the business. Virtually all other industries, I am told, though I'm not an attorney, are covered by the Fair Labor Standards Act, which doesn't apply to flight crews and other people that are regulated by the Federal Aviation Act.

Mr. SWETT. And is also unique in its ability to hire people who can go beyond the typical kind of physical requirements that anyone in the work place would have to encounter in this country.

Mr. BRODERICK. International flight or indeed transcontinental flight sometimes requires very long duty times which couldn't be accommodated by a normal eight-hour day.

Mr. SWETT. Is there a test that is given to flight attendants and pilots that requires them to remain alert for 24 hours without sleep and then they are given certain tasks to fulfill in order to determine whether they are physically capable of maintaining a high level of performance at this time?

Mr. BRODERICK. Well, the FAA does something on the order of 20,000 en route inspections every year, in which we fly on airplanes with flight crews in the front or in the back of the airplane and assess their performance. Those are in fact literally tests. Passing the test will not get you anything; failing the test could cause you as a pilot to lose a license, and—

Mr. SWETT. They're not at any point—I'm sorry for interrupting. My time is up.

I'd appreciate the Chairman's allowing me to pursue this line of questioning for one more minute.

There are no tests at this time when they are doing their observation where they can determine whether reaction time or a clarity of thought is being impaired because of overextended work hours?

Mr. BRODERICK. Scientifically, they have done research, but there are no routine tests for every employee, no, sir.

Mr. SWETT. I appreciate your coming before this committee. I think it's always valuable to have the opposing position. I feel that your arguments are very weak in this case, and I hope that you can come to recognize that before this bill comes before the House. Thank you very much for you testimony.

Thank you, Mr. Chair, for allowing me the time to pursue these questions.

Mr. MINETA [assuming chair]. The gentleman from Illinois, Mr. Poshard?

Mr. POSHARD. Thank you, Mr. Chairman.

Mr. Chairman, I'd like to ask unanimous consent that my prepared statement be entered into the record.

Mr. MINETA. without objection so ordered.

Mr. POSHARD. Mr. Broderick, thank you for coming before the committee. I just have a couple of brief questions. I know there are other witnesses here.

I noted in the study that you examined over 12,500 records, and I'm just wondering. I'm reading from the study here which states, "The instances of below minimum rest or extended duty periods contained here are the result of a concentrated effort to identify appropriate records or search for worst cases. Thus, more examples probably were discovered in this study than would have been found if the same amount of effort had been invested in a pure random sampling, given the same constraints in terms of records availability time and resources." So you made a concentrated effort to not just randomly sample cases but to find worst cases, and in those 12,500 records that you examined, you only found six cases which exceeded 18 hours of the duty schedule.

In all honesty, and I'm not trying to be super critical of your investigation, I think individual members of this committee hear at least six cases a month anecdotally from flight attendants that they themselves have worked at least that long. How do we get such a divergent view from people who are flight attendants, who contact us regarding to this issue, as opposed to what your study finds when you're actually trying to look for the worst case scenarios? I'm just trying to—

Mr. BRODERICK. I think it's just a question of the numbers, sir. There are 10 million flights a year, there are some 80,000 individual flight attendants, and we only looked at—actually, it was 12,500 records roughly, and the numbers that I've got are 7,206 actual duty periods. So we only looked at a small fraction.

I would rather look at percentages, and if you look at percentages, for example, for the major carriers—the United, American, that size of carrier—less than 2 per-

cent of all of the records that we looked at showed actual duty days—actual duty days, now—over 14 hours. It's a very small percentage, clearly not the prevalent work habit or work requirement.

Mr. POSHARD. But could there be some inconsistency here in the method used for recordkeeping by the companies and what actually goes on with the attendants? Because we're getting two different viewpoints here between the records that you examined and what we hear constantly from people who are on the job.

Mr. BRODERICK. I don't think there's inconsistency, because we're fundamentally talking about pay records, but I certainly would think that there would be a different weight attached to the seriousness of the problem if you look at different sides of the argument.

Mr. POSHARD. I think what we have here in regard to trying to collect data and objectify your assessment is we're trying to put objective data in place on what is a very subjective evaluation in terms of the ability of these people to function under very stressful situations at different times. I don't know how we can objectify the effect of staying up 12 hours or 16 hours in a row on a duty schedule with very little rest in between and say because this was all the hours that were worked, there were no accidents attributed to this or whatever. I mean, it may very well be that we have not encountered a disaster along these lines in spite of these things as opposed to because of them. You know, I'm very concerned about this.

I appreciate your being before the committee. I wish there was some way we could rectify the difference between the views of the people who work and the objective data that you've accumulated here. Thank you.

[Mr. Poshard's prepared statement follows:]

STATEMENT OF CONGRESSMAN GLENN POSHARD

Mr. Chairman, thank you for calling today's hearing on H.R. 14 and the issue of flight attendant duty restrictions.

Since almost all of my colleagues in the House and I spend a good deal of our time traveling by air, issues dealing with flight safety quickly catch our attention.

More than anything else, this bill is a safety measure. It's not a short-circuiting of the collective bargaining process or an unfair Government restriction of an employee's right to work. The bill is designed to improve passenger safety on our Nation's airlines and to prevent the kind of overwhelming fatigue which working around the clock can cause.

Today's hearing sends the right signal to the Department of Transportation. It lets them know we want them to finish the rulemaking process and put into effect regulations which protect the health and safety of flight attendants and our Nation's air passengers.

It would be a relief if, following this hearing, the Department would expedite the rulemaking process. But until that happens, we must move ahead. I would like to thank our witnesses for taking the time to appear before the subcommittee this morning, and I look forward to hearing what they have to say.

Mr. MINETA. Mr. Hobson.

Mr. HOBSON. No, thank you, Mr. Chairman.

Mr. MINETA. Well, Mr. Broderick, again you point to those foreign airlines that have flight duty time policies, and then you say, "Well, they're state-owned, so therefore for them it's an employment policy," I guess is what you're saying. Do those airlines that operate in those countries have employee organizations or unions that negotiate with the state in terms of those, or are those sort of like, "Now, hear this, now, hear this," and it gets imposed from top down?

Mr. BRODERICK. Most certainly, many of the countries have unions that are in fact quite strong. As you know from reading the papers about travel in Europe, there are very frequently the kinds of strikes and things that go on in many countries in Europe. South America is the same way.

So certainly I'm not an expert on labor law, but I can assure you that there are some unions that actually negotiate these things and have the power to wield contract concessions or to generate contract concessions. There's no doubt about that.

Mr. MINETA. And you've made a study of those to come to your own determination as to what our actions should be in the United States?

Mr. BRODERICK. We included our review of that in the flight time study, and the primary purpose of our review of that was to see if there were some kind of factual basis upon which these work rules were based that we could use in the balancing of safety improvement versus costs of the regulation. We found none, and we did find a wide variety of work rules not unlike if you would look at different carriers in the United States you're looking at different countries around the world and seeing differences in the work rules that they've negotiated with their employees.

Mr. MINETA. So once those work rules are established by negotiations in the United States between an employee organization and the employer or because of the goodness of the company, you don't believe the Government should, as you said, overlay the company's safety rules?

Mr. BRODERICK. I said that the question at hand is whether or not the Government should.

Mr. MINETA. That's right. You said the Government should not overlay the company's safety rules.

Mr. BRODERICK. Right.

Mr. MINETA. I don't understand that. We have OSHA. We have Federal Labor Standards. I don't understand what you mean by that, then.

Mr. BRODERICK. We would only want to propose a regulation if we saw a benefit in terms of improving safety.

Mr. MINETA. I see.

Mr. BRODERICK. Or reduced hazard. And we don't see that, sir.

Mr. MINETA. Mr. Broderick, you're an executive manager in the FAA. Do you also have the right in terms of personnel to pick and select and to fire and hire?

Mr. BRODERICK. Yes, the normal hiring and firing authority that goes with any job.

Mr. MINETA. I see. Now, do you believe in affirmative action?

Mr. BRODERICK. Absolutely.

Mr. MINETA. And what's the cost-benefit ratio that you have found in your division in administering an affirmative action program as the Associate Administrator of the FAA?

Mr. BRODERICK. Well, when you look at women and minorities and assume that you would not use an affirmative action program to take advantage of that tremendous labor pool, you are rejecting out of hand arbitrarily and illegally resources that have made this country great.

Mr. MINETA. And what's the cost, then, of that?

Mr. BRODERICK. I think the cost is fairly trivial.

Mr. MINETA. Have you been able to define what the cost is in terms of the loss?

Mr. BRODERICK. No, I have not, sir.

Mr. MINETA. Then why is this so trivial that you don't pursue a cost-benefit ratio study as it relates to the flight duty time for flight attendants?

Mr. BRODERICK. We have, sir. We have done an extensive study of the costs.

Mr. MINETA. You have only been the repository of information that has been given to you, but you have not pursued in an affirmative manner a study to in fact determine fatigue or other factors that go into the job of a flight attendant.

Mr. BRODERICK. That is correct. We haven't seen——

Mr. MINETA. Let me ask, if I can follow up on that, it seems to me that—well, first of all, let me ask, do you consider flight attendants as safety-sensitive employees?

Mr. BRODERICK. Yes, sir.

Mr. MINETA. Then on that basis, why do you require drug testing?

Mr. BRODERICK. Because of the fact that they are safety-sensitive employees, and they must be able to function clearly, uncorrupted, if you will, by drugs. [Applause.]

Mr. MINETA. And what about fatigue?

Mr. BRODERICK. I know of no studies which show that increased fatigue will reduce their ability to perform their required safety functions. It's clear that people under the influence of drugs can't be expected to perform any reasonable function.

Mr. MINETA. Do I assume, then, that you have never worked longer than 14 hours?

Mr. BRODERICK. That would be an incorrect assumption, sir.

Mr. MINETA. And your efficiency at your job at 14 hours is not diminished as compared to at other hours that you have worked at your job?

Mr. BRODERICK. My efficiency is likely to be diminished, but my ability if I were a flight attendant to perform an emergency function is not clearly diminished at 14 versus 12 or 14 versus 16 hours.

Mr. MINETA. Then should a pilot be able to fly for 30 hours at a time?

Mr. BRODERICK. No, we limit flight time for pilots on the basis of scientific studies which have shown an inability to properly control the airplane with increasing fatigue.

Mr. MINETA. Then could you also for the record submit that as it relates to pilots?

Mr. BRODERICK. I'd be happy to submit a bibliography of information, yes, sir.

[The information received from Mr. Broderick follows:]

* * * *

Mr. MINETA. And the flight engineers?

Mr. BRODERICK. I'm not sure about flight engineers, but we'll take a look.

Mr. MINETA. Flight navigators?

Mr. BRODERICK. I'm not sure that flight navigator, dispatcher, mechanic regulations ever went through the kind of analysis that we're talking about.

Mr. MINETA. Are they not subject to duty time requirements as air traffic controllers or mechanics or dispatchers?

Mr. BRODERICK. Because of decades-old rules that existed before the requirements that were legislated to do the kind of cost-benefit tradeoffs, yes, sir. But I don't know of any studies that relate—for example, the mechanic rule is you must have one day off in seven. The dispatcher rule is you must have eight hours of rest after 10 hours of continuous duty, but then you can go right back to 10 hours of continuous duty, and one day off a week.

Mr. MINETA. And why is that standard imposed on dispatchers?

Mr. BRODERICK. It long predates my interest in aviation, sir. I'd have to research it. I'm sure that rule is at least 30 years old. Maybe even 40 or 50.

Mr. MINETA. I take it, then, that in terms of the drug testing that you are able to somehow calculate the benefits.

Mr. BRODERICK. The drug testing regulation was promulgated at the same time we had a national initiative to promulgate anti-drug regulations throughout the work force. You will remember that we did it for all modes of transportation. Yes, we did do a benefit-cost analysis. I'm not sure that it got down to the level of detail of flight attendants versus flight engineers versus pilots. I think it was self-evident to people that it was inappropriate to have people under the influence of drugs performing safety duties in the air.

Mr. MINETA. Were there accidents or injuries that had been caused by flight attendants who were on drugs?

Mr. BRODERICK. Not that I know of.

Mr. MINETA. Then why do you say that you need to have evidence of passenger injuries whether it related to fatigue before you regulate duty and rest time?

Mr. BRODERICK. I didn't say we needed and I wouldn't want to say we need injuries or a body count. I was stating for the record that there is no evidence of past injury. What I did say, Mr. Mineta, is that we don't see a safety benefit that could be achieved by limiting the already good industry practice further.

Mr. MINETA. I thought your testimony said just the opposite. Did you not say that you needed to have—after reviewing 38,000 accidents or whatever it was, did you not say that there was no justification for it?

Mr. BRODERICK. I said the record shows not a single incident where this has occurred. I don't want to imply that we need a body count. Thta's something that's abhorrent to me and I know to members of the subcommittee.

Mr. MINETA. Well, what are you saying?

Mr. BRODERICK. I'm saying I need to have an objective and reasonably well established relationship between the thing that we are trying to eliminate by regulation and a safety benefit. I don't see the relationship in any objective way between reduction in fatigue and increase in the safey benefit that comes with that reduction for flight attendants. I'm not questioning the reduction in fatigue that would be associated with a reduction in duty hours.

Mr. MINETA. Well, it seems to me you came to some conclusion as it related to drug testing in the Federal Register of November 21, 1988, when you talked about the benefits.

Mr. BRODERICK. I'd have to review—

Mr. MINETA. Without, again, the kind of "body count."

Well, let me at this point yield to the chairman of the committee.

Mr. OBERSTAR [resuming chair]. Mr. Broderick, I want to review the billion dollar figure you cited. How

did you come to that number? What process of analysis was achieved? What documents and records do you have in the FAA files in your now nearly two-year-long review of this subject matter? I'm sure there must be very extensive records.

Mr. BRODERICK. Well, of course, we don't have a two-year history with the review of H.R. 14, but I would be happy to—

Mr. OBERSTAR. It's been two years since we last visited this subject almost.

Mr. BRODERICK. I would be happy to supply for the record the analysis. What I specifically did was ask our economic analysis branch to look at the costs that would be associated with implementing a regulation which was drafted exactly like H.R. 14 was drafted. Their analysis resulted in an esitmate in undiscounted dollars of a little over a billion dollars over the 15-year period that they analyzed.

Mr. OBERSTAR. What process of analysis did they use to—what factors did your people use to come to this number of a billion dollars?

Mr. BRODERICK. What they basically had to do was to calculate the additional number of flight attendants that would be required because of reduced duty days, the additional number of trips that would be required, the additional number of overnights, the additional training, and that kind of thing, as well as, of course, the record-keeping that we talked about earlier, and add all that up, and as I remember the number, it was about $50 million in undiscounted dollars per year.

Mr. OBERSTAR. Do you recall a specific carrier—which you need not name, call it carrier "X"—and how many additional flight attendants it would require?

Mr. BRODERICK. No, I don't, sir.

Mr. OBERSTAR. How many for the industry?

Mr. BRODERICK. No, I don't. I'd prefer not to—

Mr. OBERSTAR. Did you call in flight attendants to get their views as you were going through this process of consideration?

Mr. BRODERICK. No, we didn't. As a matter of fact, it was an effort that was done over the last month or so, when H.R. 14 became available.

Mr. OBERSTAR. It was just done in this last month?

Mr. BRODERICK. Yes.

Mr. OBERSTAR. This isn't a year-and-a-half or two-year-long review process?

Mr. BRODERICK. No, sir.

Mr. OBERSTAR. Were industry representatives called in?

Mr. BRODERICK. Not that I know of.

Mr. OBERSTAR. Was this an internal FAA review?

Mr. BRODERICK. Yes, by the Office of Aviation Policy and Plans, I think they're called.

Mr. OBERSTAR. Was it subjected to any outside analysis of any kind?

Mr. BRODERICK. No, sir, it's the same kind of review that we would do if we were doing—well, when we did the cost analysis of our own regulation, done by the same team. People that understand the issue and how the costs are allocated in the industry.

Mr. OBERSTAR. Is this gathered all together in one document?

Mr. BRODERICK. Yes, it's actually fairly brief. It's a comparison of—I mean, it lays out what the expected additional costs are from H.R. 14.

Mr. OBERSTAR. Can you make that available to the committee today?

Mr. BRODERICK. We'd be happy to submit it for the record, sir, yes, sir.

[The information received from Mr. Broderick follows:]

* * * *

Mr. OBERSTAR. And for the record, then, I would call in GAO to have their objective analysis done of the FAA study, and we may subject to further review. That number seems awfully big, awfully speculative to me.

Mr. BRODERICK. Well, of course, it would be speculative, because you're projecting how an industry would react to a fairly major change in its scheduling and duty

rules, but it's the best we could do without going to industry and getting a detailed review.

Mr. MINETA. Would the gentleman yield on that?

Mr. OBERSTAR. In just a moment.

You also did a cost-benefit analysis of your regulation, didn't you?

Mr. BRODERICK. Yes, sir.

Mr. OBERSTAR. It would be useful to have that document as well, if you can get that to us today. I want to see and compare the methodology used in the two cases and to analyze the basis upon which the conclusions were reached.

Mr. BRODERICK. I'd be happy to, sir.

[The information submitted by Mr. Broderick appears on page 92.]

Mr. OBERSTAR. I yield to the gentleman.

Mr. MINETA. Mr. Chairman, that was what I was going to ask about, following up on that piece of it.

Mr. HOBSON. Mr. Chairman.

Mr. OBERSTAR. I'll yield in just a moment.

We're really having a hard time with this subject. On the one hand, you're saying, "You know, we're not looking for a body count, but because there hasn't been one, we don't think there ought to be a regulation." So you really are looking for a body count, and if there were one, then you'd rush in to do something. But because there isn't one, you say that regulation isn't needed and the duty time limitations aren't needed.

You know, I've been somewhat of a student of labor history, and I cited an incident in my opening comments, one that has particularly aggravated me, having grown up in an iron ore mining country of northern Minnesota, and I think back to 1910—it took 240 years of the industrial revolution to get to an eight-hour work day. You know, it shouldn't take us 80 years after that to come to another limitation on time spent in the work place.

My father worked 26 years in an underground iron ore mine. Often times he was asked to work overtime or to

double out even. After a time, he just said no, even though it meant extra money for the family. He wasn't going to do it, because when you get tired, you make mistakes, and working overtime on a double-out shift one night, some guy who was equally tired and couldn't handle a piece of pipe—about an eight-inch pipe that they were laying 600 feet underground—slipped through lack of attention to what he was doing, snapped, snapped my father's hand back, split a finger right down the middle, and broke it at the joint. He was out of work and didn't get paid for being out of work. In those days, they didn't have pay for that. Fatigue.

I can go on and give a lot of other incidents. As a young kid, I sat there listening to my father, who was chairman of the safety committee in the underground mine, talking about safety conditions that needed to be corrected.

We have an opportunity here to do something good for people—for passengers, and for those who have to work aboard the aircraft. That's their work place every bit as much as the underground mine.

The gentleman from Ohio.

Mr. HOBSON. Mr. Chairman, I just have one other request that we might ask on numbers. That was the only reason I interrupted before. I think you stated that in the bill that's proposed the rules are in excess of what those are for pilots. Is that correct?

Mr. BRODERICK. They can be, yes sir.

Mr. HOBSON. Is there any way to look at the numbers to come back and try to coordinate as to what the cost might be if you were to assume some of the same rules that apply to pilots so you'd have some consistency between what's being asked of one and the other? I understand the jobs are different, but they are on similar type schedules, I would assume, and if you could look at those numbers at the same time, I think that might be helpful to the committee.

Mr. BRODERICK. The difficulty, of course, is that you have duty time and flight time, and you can't ever directly

compare the two. If the bill were written in exactly the same way as the pilot rules were written, it would be possible to compare them, but when you compare duty time to the—I mean, duty time is essentially flight time plus time that you've got to be on the job waiting for a flight, simply stated. Flight time is only the flying part of that. So it's very difficult to compare those two.

That's one of the reasons why this regulation is expensive, because if you put a hard limit on duty time, that means a flight delayed on the ground might not be able to take off, because the duty time clock is going all the time the plane is on the ground, whereas the flight time clock for the pilot isn't moving until the pilot moves the airplane. So they're incompatible regulations fundamentally at the very root.

Mr. MINETA. Would my colleague yield on that point?

Mr. Broderick, that practice even varies from airline to airline. Some airlines count duty time from the time they come in for their briefing. Others say duty time starts when the nose rotates. So sometimes you may have a flight attendant come to work, get his or her briefing, be on the airplane, push back from the gate, taxi on out, have a mechanical, and go back to the gate, and they're duty time hasn't started yet. It that fair?

Mr. BRODERICK. That's a fair description of what might be. Do you mean is that fair to—

Mr. MINETA. I'm not asking you about the fairness of the description, I'm asking you is it fair in terms of uniformity as to when duty time starts for one employee under one condition and another employee working for another company?

Mr. BRODERICK. That's exactly why in the discussion I had with Mr. Laughlin I pointed out the need to make these regulations uniform and the cost that would be with it. It's basically a million dollars' worth of computer time a year.

Mr. MINETA. And you don't think that the Government should overlay those kinds of company practices?

Mr. BRODERICK. Without an associated safety benefit, I don't think we have the ability to do that, sir.

Mr. MINETA. OK. That's at the beginning of the duty time. What about at the end of the duty time if that's 12, 14, 18 hours? Have you looked at that?

Mr. BRODERICK. We have looked at whether or not there is a problem that we can identify with work practices that frequently get to there, and we've concluded that they don't.

Mr. MINETA. On what basis? Because you don't have any objective information.

Mr. BRODERICK. No, on the basis of the 7,000 records that we looked at, we saw less than 2 percent of the major carriers and less than 1 percent of the national carriers, who together represent 95 percent of all the people flying, and we looked at those and said, "Gee, with that small number of times that you exceed reasonable work hours, it doesn't appear that there would be a safety benefit associated with the regulations that cost a million dollars a year."

Mr. MINETA. Mr. Broderick, last year, I think, in aviation accidents—I'd be guessing—maybe 250 people were killed. In automobile accidents, we had maybe 55,000 killed or 50,000 killed. We are not spending proportionately what we are spending in terms of aviation safety as it relates to highway—we should be spending a lot more in highway safety, but we're not, and yet we're killing 50,000 people a year. When you talk about a cost-benefit ratio, I'd like to have you explain that to me, then.

Mr. BRODERICK. Well, what we need to see is that the costs that we impose on the traveling public are accompanied by a benefit that we believe is at least equal to that value.

Mr. MINETA. Well, that's my point, though. We're spending billions in aviation safety and not even hundreds of millions in highway safety, and yet in one instance

we're killing 50,000 people and in the other it may be 250 or 300 or however many. It's still less than 500.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Well, the argument, if you take it to its logical conclusion that we don't see a benefit, would argue in favor of removing a number of FAA safety-related regulations, and I don't think every single one of those FAA regulations has a cost-benefit analysis backing it up.

Mr. BRODERICK. Certainly not all the ones that exist because of their age, but all the ones that we've done in modern times do, sir. We're required to by law.

Mr. OBERSTAR. Some of those that were imposed earlier were imposed simply because good, plain common sense said, "Do these things. Build redundancy in."

Mr. BRODERICK. And some of them have costs which are not matched by benefits as well, I'm sure.

Mr. OBERSTAR. If we continue to impose the cost-benefit requirement on everything that's done in the safety field, we're going to have a lot more dead people around this country in a lot of areas of transportation. Sometimes you've got to look at something and say, as your rulemaking in 1985 said, "Some benefits are not specifically quantifiable."

You know, as for the argument about the distinction between duty time and flight time, when you get on board that aircraft, whether it sits there, as Mr. Mineta said, because of a mechanical or because of congestion on the runway or held because of air traffic control, that clock is running. That level of stress is already setting in. That level of heightened attention and effort is already there.

Your duty time doesn't start only when you've sat in your first meeting with the Administrator or with your fellow Associate Administrators. Your duty time starts when you walk in the FAA building. Already there's a certain quickened step, quickened heart beat, a heightened sense of attention to duty upon you.

Thank you very much for being with us. We look forward to getting that material today that we requested, because I think we want to begin the analysis promptly. We do mean to move on this legislation.

The committee will take a brief recess for this vote and then return with our next panel.

[Recess.]

Mr. OBERSTAR. The subcommittee will come to order and resume our sitting on testimony related to H.R. 14.

Our next panel consists of Cheryle Leon, President of the Association of Professional Flight Attendants; Ms. Erin McKee, flight attendant for a national carrier; Charlene Oshiro Yamagata, a flight attendant for a national carrier and an associate here.

Ms. Leon, would you begin and introduce your associate?

* * * *

APPENDIX F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 135

[Docket No. 27229; Notice No. 93-3]

RIN AD-60

Flight Attendant Duty Period
Limitations and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes duty period scheduling limitations and rest requirements for flight attendants engaged in air transportation and air commerce. This proposal would establish flight attendant duty period scheduling limitations and rest requirements. The proposal results from public and congressional interest in regulating flight attendant work hours and from data contained in a recent FAA study of current industry practice relating to flight attendant flight, duty, and rest times. The objective of the proposal is to contribute to an improved aviation safety system by ensuring that flight attendants are sufficiently rested to perform their routine and emergency safety duties.

DATES: Comments must be received on or before June 1, 1993.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 27229, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27229. Comments may be examined in room 915G on weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donnell Pollard. Project Development Branch, AFS-240. Air Transportation Division, Flight Standards Service, 304B, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments, and by commenting on the possible environmental, economic, and federalism- or energy-related impact of the adoption of this proposal. Comments concerning the proposed implementation and effective date of the rule are also specifically requested.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before [60 days after publication in the Federal Register], and

the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. 27229". When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention; Public inquiry Center, APA—430,800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future FAA NPRM's sholld request a copy of Advisory Circular No. 11-2A. Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Background

In the mid-1980's, the FAA received two petitions for rulemaking on flight and duty period limitations for flight attendants. The first petition, from the Association of Flight Attendants (AFA), was received on December 19, 1984, and was summarized in the Federal Register (50 FR 6185) on February 14, 1985. The second petition, from the Joint Council of Flight Attendant Unions (JCFA), was received on April 23, 1985, and was summarized in the Federal Register (50 FR 25252) on June 18, 1985.

In its petition, the AFA requested the introduction of flight and duty time regulations, equivalent to those currently applying to flight crewmembers, into 14 CFR parts

121 and 135. In addition, the AFA sought the limitation of flight time to no more than 8 hours, with a minimum rest period of 9 hours in a single daily duty period.

The AFA also addressed the potential costs and benefits of its proposal. The AFA did not foresee its proposal as having a major cost impact on the industry because many unions have contracts regarding flight attendant work hours that are more restrictive than the flight crewmember flight time limitations and rest requirements of 14 CFR parts 121 and 135. Additionally, the AFA asserted that its proposal would "ensure that flight attendants are rested enough to perform safely in an emergency. * * *"

The JCFA submitted a more complex proposal that recommended the establishment of specific maximum duty time limits, minimum release-to-report rest periods, minimum numbers of monthly 24-consecutive-hour rests at domicile, and at least one 24-consecutive-hour rest period every 7 consecutive days.

Both petitioners contended that such rules are necessary to protect flight attendants since some air carriers require extremely long and exhausting duty periods. The petitioners pointed out that not all flight attendants are represented by unions. Moreover, the petitioners stated that the unrepresented flight attendants have no protection from excessive duty hours. In its proposal, the JCFA stated that excessive duty hours often lead to flight attendant fatigue and can diminish the ability of flight attendants to adequately perform their safety function in air transportation.

Because of the petitions' common subject matter, the FAA considered the two petitions jointly in a single docket, No. 24397. Commenters in support of the petitions and in factor [sic] of regulating flight attendant hours of service included the petitioners, union members of JCFA, individual flight attendants, the National Transportation

Safety Board (NTSB), the Air Line Pilots Association (ALPA), the International Airline Passengers Association, the Director of Aerospace Medicine at Wright State University, and several members of Congress. While not citing any studies specifically related to flight attendant duties, supporters of the rulemaking agreed with the petitioners that fatigue does have an effect on performance and that flight attendants perform an important safety function in air transportation.

The NTSB, in its comment to Docket No. 24397, stated that the Board "believes that flight attendant fatigue can be detrimental to passenger safety." In its investigation of a January 21, 1985. Galaxy Airlines L-188 accident in Reno, Nevada, the Board disclosed scheduling practices that could be detrimental to passenger safety. At the time of the accident, two of the three flight attendants had been on duty for 18 hours 39 minutes. Their estimated total hours on duty, had they completed the flight to their scheduled destination, would have exceeded 25 hours. While the NTSB investigators did not attribute the cause of the accident and subsequent fatalities to the flight attendants' possible fatigue, the Board was concerned that such long duty periods "could impair the flight attendant's ability to perform the physical and mental tasks required" in an emergency.

The Air Transport Association, People Express Airlines, and the National Air Carrier Association expressed opposition to the initiation of rulemaking for flight attendant flight, duty, and/or rest limitations. These organizations saw no safety basis for rulemaking action by the FAA and believed that, if a problem exists, it is a labor/management problem and should be resolved as such.

After considering the comments submitted, the FAA isued a Denial of Petition on January 23, 1989, basing its determination on lack of evidence of any correlation among flight attendant duty time, flight attendant safety

duties, and risk to passengers. No safety justification was found for adopting more stringent daily flight time limitations and daily minimum rest requirements for flight attendants, as proposed, than the current FAR applicable to flight crewmembers. Further, the FAA found no reasonable method of determining requirements for cost-beneficial flight attendant duty times directly related to safety. The FAA concluded that the costs to the carriers to administer the proposed rules and to the FAA to enforce them, could not be justified based on any empirical or reasonably estimated safety benefit.

Later in 1989 both the House of Representatives and the Senate introduced bills to provide for the establishment of limitations on duty time for flight attendants.

On May 17, 1989, the Subcommittee on Aviation of the House Committee on Public Works and Transportation held a public hearing on the House version of the bill. At that hearing the FAA's Associate Administrator for Regulation and Certification advised the subcommittee of its intent to initiate further studies of current flight attendant scheduling practices.

The FAA completed a "Report on the Study of Current Industry Practice-Flight Attendant Flight, Duty, and Rest Times" (hereinafter referred to as the "Industry Study") on September 12, 1989. A copy of the Industry Study has been placed in the docket and is available for review. The information contained in the study, which was submitted to the House Subcommittee on Aviation, reflects a comprehensive view of current U.S. air carrier industry practices. The data collected for the study indicated that certain types of problems related to flight attendant duty hours may ocur more frequently in certain industry segments than in others because of the nature of their operations. The study also noted that a variety of mechanisms are in place throughout the industry to respond to such problems. However, the results of the study suggest the need for regulatory action, which is provided by this NPRM.

On March 13, 1991, a hearing was held by the Aviation Subcommittee (Transportation Committee, House of Representatives) on the subject of flight attendant duty and rest. The FAA did not recommend rulemaking at that hearing. Subsequently, legislation pending, now H.R. 14, was voted out of committee and passed the House. In 1992, a provision was added to both the House and Senate versions of FAA's appropriations bill which incorporated the language of H.R. 14, but the provision was deleted in conference. On January 5, 1993, H.R. 14 was reintroduced by Congressman Mineta.

General Discussion

Historical Review

The Civil Aeronautics Act of 1938 (52 Stat. 1007; as amended by 82 Stat. 1216, 49 U.S.C. 551) and subsequently, the Federal Aviation Act of 1958 (72 Stat. 775, 49 U.S.C. 1421) addressed the issue of regulating flight crewmember hours of service. The 1958 Act, as amended empowers and directs the Secretary of Transportation to promote the safety of civil air flight in air commerce by prescribing and revising from time to time "reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees." This section of the Act has been cited in arguments for establishing flight and/or duty and rest limitations for flight attendants, who are required crewmembers [1] aboard certain commercial aircraft, but who are not defined as flight crewmembers.

Flight time limitations and rest requirements for domestic air carrier flight crewmembers were revised in 1985

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[1] Section 1.1 of the FAR, General definitions, distinguishes between a flight crewmember (pilot, flight engineer, or flight navigator) and a crewmember (person assigned to perform duty in an aircraft during flight time). The FAR contains rest and duty requirements only for flight crewmembers.

(50 FR 29319; July 18, 1985). At the time of that rulemaking, a number of commenters pointed out that the proposed rule for flight crewmembers did not apply to flight attendants and that regulations should be enacted to cover those employees. Recognizing the unique duties and responsibilities held by flight attendants, the FAA chose to consider flight attendant work limits as a separate issue.

14 CFR 121.391, 125.269, and 135.107 require flight attendants on certain pasenger-carrying airplanes. Other regulations require flight attendants to meet specific and recurrent training requirements dealing with normal safety duties, emergency evacuation procedures, and hijacking incidents. Flight attendants perform essential safety duties, including the following: (1) Identifying the location and using emergency exits, fire extinguishers, first aid kits, flotation devices, oxygen masks, and slides, (2) employing land and water evacuation procedures, including issuing evacuation commands, redirecting all passengers, and removing nonambulatory passengers; (3) responding to in-flight emergencies such as smoke or fire in the cabin, turbulence, medical emergencies, airplane decompressions, and airplane hijackings; and (4) using nonemergency safety procedures, including checking emergency equipment before flight, ensuring that baggage is correctly stowed so it will not block any exit in case of an emergency evacuation, securing galleys, briefing the passengers on safety equipment, emergency evacuation, and crash landing procedures, and ensuring compliance with all other applicable safety regulations. In recognition of their safety-sensitive role as crewmembers, flight attendants are subject to the alcohol and drug use regulations (§ 91.11, new § 91.17 effective August 18, 1990), and to regulations on drug testing (§§ 121.429, 121.455, 121.457, 135.249, 135.251, 135.353).

Because such safety regulations are applied to flight attendants as well as flight crewmembers, there is a grow-

ing complaint about the absence of duty and rest requirements for flight attendants. Flight attendants are the only safety-sensitive aviation group that does not have such rules.

Industry Study

The Industry Study focused on air carrier's scheduling practices and on flight attendant's actual work hours. The study divided the air carrier industry into four categories: Majors, nationals, regionals, and supplementals. Each category generally differs in route structure and provides varying levels of service to the traveling public. Rather than serve as a general survey of industry practices, the Industry Study was designed to review current industry practice to identify extreme cases when contract/work rule limits were exceeded and where there were no work rules.

According to figures provided by airlines, unions, and the FAA field offices, approximately 83,000 flight attendants are employed in these four segments of the U.S. air carrier industry. Carriers selected for this review represented a cross section of the industry and the various types of operations. The study examined the work rules and policies of 36 U.S. air carriers, including the findings from 21 on-site visits, and provided detailed information concerning flight attendant work schedules. The work hours of flight attendants employed by these carriers are governed by union contracts, company work rules, or guidelines determined by the carrier. The Industry Study verified that scheduling guidelines vary considerably within the industry because of fundamental operational differences among the carriers.

Preliminary input was obtained from the FAA principal operations inspectors (POI's) assigned to monitor the operations of 74 air carriers throughout the country. The Industry Study noted that. even though the POI's work with flight attendants is limited to issues of cabin

safety rather than duty hours, the POI's receive flight attendant complaints and comments about conditions that may affect cabin safety.

The information from the POI's indicated that most air carriers, including all majors and nationals, had union contracts or written work rules governing flight attendant scheduling. The carriers' recordkeeping practices varied widely, as was confirmed by the study. The POI's reported that, in about one-fifth of the 74 carriers, they had observed or been told about potential problem areas of long duty periods or minimum rest periods. Some of the POI's emphasized the need for flight attendants to be well-rested in order to respond effectively in emergency situations.

Parameters chosen for analysis in the Industry Study were based on a variety of established guidelines, including flight crewmember flight duty time, and rest requirements in FAR parts 121 and 135. Normal and minimum scheduling limits were based on industry practice and on the current flight crewmember regulations. Data collected targeted longer-than-average duty days, below minimum rest periods, and instances of a high number of flight hours in a day, week, month, or year. The study revealed examples outside the boundary of normal industry practice. These "extreme" cases included lengthy work days, inadequate rest periods, and a high number of consecutive days worked. The study noted that, while certain extremes did not occur frequently, they could be expected to occur under circumstances such as weather, mechanical, air traffic control (ATC), and other types of operational delays typical of air transportation. Other extremes noted were a result of flight attendants voluntarily exceeding company-prescribed limits to receive extra pay or days off, or to avoid adjustments to their work schedule.

Listed below are the parameters chosen for analysis and a summary of findings regarding each parameter:

- Union Representation and the Existence of Contract/ Work Rules

The FAA estimates that approximately 78 percent of all U.S. flight attendants have scheduling guidelines implemented through union contracts that establish wages, work hours, and working conditions. The remaining flight attendants have their hours of service set by their employers, usually based on written work rules, policies, or guidelines. As noted in congressional testimony and in the Industry Study, flight attendants may be subject to lengthy duty periods and inadequate rest when flights are delayed due to weather, mechanical problems, or carrier scheduling problems. Although a unionized flight attendant can follow established grievance procedures if a carrier exceeds his or her union contract's flight, duty, and rest limits, these procedures can be lengthy and may result in the flight attendant's suspension from service until the matter is resolved. Nonunion flight attendants have limited recourse for excessive work hour assignments.

- Guidelines or Policies for Scheduling a Fight Attendant's Work Day, Domestically and Internationally

Fight attendant records reviewed in the Industry Study showed that the number of actual work hours per day ranged from as few as 4 to more than 20. Typical actual duty periods for domestic operations were 14 hours or less; for international operations they ranged between 14 and 16 hours. A small percentage of the actual duty periods documented were more than 20 hours. Lengthy work days are typically a result of delays due to air traffic control, weather, mechanical, or operational difficulties. While each industry segment experienced such problems, supplemental carriers appeared to have the highest occurrence of lengthy work periods, primarily because of their geographically widespread operations and limited operational flexibility due to fewer crew bases or maintenance facilities, or fewer aircraft.

- Number of Scheduled Flights per Duty Day

The number of scheduled flights per duty day did not appear to be an industry problem because the number of flights are effectively limited by the number of scheduled work hours. Regional carriers were found to be more susceptible to scheduling a high number of flights per day because of their route structures and the short duration of their flight segments.

- Scheduled Rest Periods

Limited air carrier documentation of actual flight attendant rest periods was available. Generally, the records reflected actual flight and duty hours rather than the actual length of rest periods. Eight hours to nine hours appeared to be the standard minimum rest received in domestic operations. Twelve hours minimum was common in international operations. However, some cases in which rest periods fell below 8 hours because of operational irregularities were documented.

- Flight Attendants Voluntarily Exceeding Set Work and Rest Limitations

A majority of the carriers allowed flight attendants to voluntarily waive carrier or contract flight and duty limits and certain rest limits to make scheduling adjustments or work extra hours for additional pay. This provision allows carriers and flight attendants increased scheduling flexibility.

- Maximum Number of Flight Hours Scheduled per Week/Month

The maximum number of flight hours scheduled per week and month were not restricted by the majority of carriers reviewed. Few cases of flight hours exceeding 14 CFR parts 121 and 135 flight crewmember flight time limits were documented. Instances in which flight hours exceeded FAR or company guidelines appeared to be a result of flight attendants voluntarily working additional flight hours.

• Number of Consecutive Days Worked

The number of consecutive days worked was limited by a majority of the carriers which required that flight attendants be relieved for at least 24 consecutive hours every 7 days. Excesses found in this area were attributed to flight attendants voluntarily waiving their time off.

The variations noted in duty time and rest hours resulted from air carriers exceeding their established operational guidelines and flight attendants voluntarily exceeding limits. The Industry Study confirmed that, whether voluntarily or at the direction of the carrier, contract/work rule limits are exceeded limits are exceeded on a limited but consistent basis.

The FAA also reviewed foreign civil aviation regulations on the limitation of flight attendant flight, duty, and rest requirements. The FAA obtained information from foreign embassies, foreign civil aviation authorities, foreign air carriers, and the International Civil Aviation Organization (ICAO) Circular. "Flight Crew Fatigue and Flight Time Limitations" (25—AN/47/6, 1984). Generally, countries that do regulate flight attendant work hours apply similar limitations to flight crewmembers and flight attendants. Yet, while similar, flight attendant limitations are typically less restrictive than flight crewmember limitations.

Several foreign government civil aviation authorities cite aeromedical information as the basis for their regulations on flight attendant work hours, although none cited specific studies on flight attendant work hours, rest, or safety issues. Six of the countries reviewed established limits specifically to control fatigue.

Flight Attendant Duty, Rest

The proposals contained in this notice would limit flight attendants' work by scheduled duty hours rather

than by flight hours. In addition, the proposals would establish rest period requirements for flight attendants.

The duty-hour approach is based on the flight attendant's typical work day. For the purposes of assignments involving flight time, the duty period including the total elapsed time between when the flight attendant reports for a flight assignment, as required by the air carrier, and when the flight attendant is relieved from duty by the air carrier. Flight attendant duties include pre- and post-flight safety-related duties.

Pre-flight safety duties include aircraft emergency equipment checks and passenger boarding. The Industry Study noted that air carriers vary in how early they require flight attendants to check in to begin their duty periods and pre-flight duties. This check-in or report time varies depending on the type of equipment flown and the flight destination. Carriers typically require flight attendants to arrive 30 minutes to 1 hour before scheduled departure. The Industry Study noted that some carriers require flight attendants to report for duty up to 2 hours before departure on international flights.

Post-flight safety duties include the safe deplaning of passengers, duties related to securing the aircraft, and administrative responsibilities such as reporting inoperative cabin safety equipment to maintenance personnel. Typically, flight attendants are required to remain on duty after the aircraft arrives at the gate to accomplish these post-flight duties before they are relieved from duty. Thus, a flight attendant's work is not solely a function of whether the aircraft is airborne, because they perform very important safety duties during boarding and deplaning.

Under the proposal, if a flight attendant reported for duty as required and found that the flight assignment was incorrectly scheduled or that the flight was delayed or canceled, a duty period nevertheless would have begun. For example, a flight attendant may report for duty as

scheduled, only to find that the assigned report time is incorrect and that duty actually begins 2 hours later. The carrier could either keep the flight attendant on duty or release the flight attendant for a complete rest period under the applicable section of this proposed rule.

Training, gate duties (such as assigning seats, collecting tickets and boarding passes), or other ground duties not directly associated with a particular flight assignment, such as ticketing or reservations, are not considered as assignments involving flight time for purposes of this proposal. The proposed rules are intended to regulate activities that are normally performed by flight attendants. The rules are not intended to regulate activities unrelated to normal flight attendant duties; nevertheless, these types of duties could not be performed for a carrier during a required rest period.

A major issue in establishing limitations for flight attendants is the compatibility of the proposed flight attendant limitations with the flight, duty, and rest limitations for flight crewmembers. The proposed regulation for flight attendants is based on duty periods, while the current regulations for flight crewmembers are based on flight hours. Under certain conditions, current flight crewmember regulations, particularly for flag and supplemental operations, may permit extremely long duty periods, as much as 30 hours or more. These are based on flight hours and formulas that may require extended rest periods in case of extended flights. Some flight crewmember regulations also are based on substantially augmented crews and adequate sleeping quarters on the airplanes. It is therefore difficult to compare the flight crewmember rules with the proposed international limits for flight attendants. Most rest and scheduling provisions in the proposed rule appear compatible with most flight crewmember scheduling provisions, and the concept of augmented crews is carried over from the flight crewmember regulations as well. But while sections of this proposed regulation are

compatible with the flight crewmember rules, the FAA is not aware of a reliable formula or ratio for absolutely matching flight hours to duty hours.

The intent of this proposed rule is to ensure that flight attendants are rested, through properly scheduled duty periods and rest periods, without causing major recordkeeping or staffing burdens to the air carriers, the flight attendants, or the FAA. The proposal would do this, in part, by having carriers set schedules based on past operating experience. Regular delays on certain routes or deviations from certain schedules would indicate that the schedules need to be adjusted to comply with the proposed limitations. As with current pilot regulations, the proposal acknowledges that certain delays, such as adverse weather, cannot be anticipated. For example, § 121.471(g) states that "A flight crewmember is not considered to be scheduled for flight time in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the air carrier (such as adverse weather conditions), are not at the time of departure expected to reach their destinations within the scheduled time." Nevertheless, carriers would be expected to recognize when certain schedules need adjustment due to regularly experienced delays. The addition of recordkeeping requirements for flight attendants, as proposed, would assist both the carriers and the FAA in monitoring the effectiveness of the scheduling process.

The FAA recognizes that the current regulations for flight crewmembers are inconsistent among themselves regarding disincentives for exceeding scheduled duty time (for example, there are differences in the rest requirements in the domestic, flag, and supplemental rules). The FAA solicits comments on establishing compensatory rest periods for flight attendants in the event that scheduled duty periods are exceeded.

This proposal is a preventive measure designed to address the potential safety problems that may occur if fatigued flight attendants work extended duty hours or receive inadequate rest because of air carrier scheduling or flight attendants voluntarily scheduling their own work hours in excess of reasonable limits. This proposal is not a response to specific accidents. Data are not available to demonstrate a link between flight attendant fatigue and the outcome of accidents in which flight attendants have exercised their safety duties. Since flight attendants are required crewmembers and need to be alert and exercise judgment in performance of routine and emergency safety duties, the air safety system would be enhanced by limiting the potential for fatigue. This proposed measure would place limitations on flight attendant hours of service by requiring certain scheduling limitations and minimum rest periods.

Possible Alternative Procedure

Although the FAA does not expect the lack of a formula to present scheduling problems, carriers may prefer the option of scheduling flight attendants under the same flight, duty, and rest requirements that exist for flight crewmembers. Therefore, the FAA invites comments on the possibility of modifying the proposal, as presented in this NPRM, to add an option for air carriers, commuters, and other operators to either follow the proposed duty and rest requirements set forth in this NPRM or apply flight crewmember requirements to flight attendants. Because there are differences in the rest requirements among the flight crewmember regulations (i.e., domestic, flag, and supplemental regulations), persons interested in applying the flight crewmember regulations in flight attendants as an alternative should submit detailed concepts and plans, to include estimated cost data, on how such an option would work. These comments should include consideration of the flight crewmember flight time and

rest regulations applicable to domestic, flag, and supplemental air carriers under 14 CFR part 121 and the flight time and rest regulations applicable to air taxi operators under 14 CFR part 135. The FAA will evaluate all concepts and may include such an option in any final rule.

Discussion of the Proposals

The proposed rule would establish duty, rest, and recordkeeping requirements for flight attendants under parts 121, 125, and 135.

The proposed regulatory limitations for Parts 121 and 135 were based in part on current industry practices as reflected in the Industry Study. These proposed amendments should be compatible with air carrier operations and should meet the objective of providing reasonable basic limitations that are conducive to safety. The proposed regulatory requirement for Part 125 flight attendants are the same as the Part 125 requirements for flight crewmembers.

Proposed §§ 121.466(a) and 135.273(a) of this NPRM contain a list of terms and definitions applicable to the proposed amendments. Under the proposals, "duty period" is defined as the period of elapsed time between when the flight attendant reports for an assignment involving flight time, and ends when the air carrier or certificate holder releases the flight attendant from duty. The proposed rule is intended to ensure that flight attendants are rested between duty periods that entail flight assignments. Hence, the scheduling limitations apply only to duty periods entailing flight assignments, rather than assignment to training or ground duties. The FAA believes that restricting the applicability of this notice to periods entailing flight assignments will not pose problems of carriers scheduling flight attendants to ground duty followed by flight duty. The agency solicits comments, however, on this issue.

The proposed rule defines a "rest period" as a period free of all restraint or duty for the certificate holder, and free of all responsibility for work or duty should the occasion arise. A rest period is considered personal time. For example, a flight attendant could not be released from duty for a required rest period while on board an airplane on a long international flight, since, clearly, the flight attendant would be under restraint by the carrier and the flight attendant would be on the airplane at the direction of the carrier. Thus, deadhead transportation as described in § 121.466(m) and § 135.273(m) could not occur during a required rest period.

Under the proposal, a "flight attendant" is considered to be an individual, other than a flight crewmember, assigned to duty in an aircraft during flight time and whose duties include, but are not necessarily limited to, cabin safety responsibilities. Thus, all flight attendants, including required and nonrequired (those assigned in accordance with the required minimum complement of flight attendants required for a particular flight under § 121.391, § 135.107, or the carrier's operations specifications, and flight attendants in excess of that minimum complement), would be covered by the proposed rule. All assigned flight attendants are crewmembers, whether required or nonrequired, and would be expected to respond to emergencies or routine passenger safety duties, regardless of whether they were part of the minimum required flight attendant crew.

For clarification purposes, the proposal defines "calendar day" as the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Part 121 and Part 135

The Addition of Flight Attendant Duty Limitations and Rest Requirements—Part 121, Subpart P, (All Certificate Holders); Part 135, Subpart F, (All Certificate Holders)

Duty Limitations

The basic duty period scheduling limitation in all operations would be 14 hours, under proposed §§ 121.466(b) and 135.273(b). Longer duty periods could be scheduled if a longer rest period is scheduled and additional flight attendants were assigned to each flight on which the flight attendant worked. These additional flight attendants would be over the minimum complement required under the carrier's or the certificate holder's operations specifications. The minimum complement is established under § 121.391. Section 121.391 requires one flight attendant for every 50 passenger seats. However, as specified in § 121.391(c), if the certificate holder uses more than the minimum number of flight attendants to conduct the emergency evacuation demonstration required under § 121.291, then the number of flight attendants used in the demonstration is set forth in the certificate holder's operation's specifications as the minimum complement required for the aircraft.

Under the proposed duty period regulation, additional flight attendants would be required as follows:

- For a duty period scheduled for more than 14 hours, but no more than 16 hours, 1 additional flight attendant. (Proposed §§ 121.466(e) and 135.273(e)).
- For a duty period scheduled for more than 16 hours, but no more than 18 hours, 2 additional flight attendants. (Proposed §§ 121.466(f) and 135.273(f)).
- For a duty period scheduled for more than 18 but no more than 20 hours, 3 additional flight attendants. (Proposed §§ 121.466(g) and 135.273(g).)

The longer scheduled duty periods are contingent upon the assignment of additional flight attendants in order to provide an extra measure of safety by distributing the workload and permitting more rest. This will ensure that flight attendants are more alert and can contribute to safer operations. It is important to note that if a flight attendant were scheduled for a duty period longer than 14 hours, the appropriate number of additional flight attendants would have to be present on every flight segment to which that flight attendant was assigned. In practical terms, the FAA expects that this would occur on larger aircraft and, generally, long-haul operations with relatively few flight segments. This result would be consistent with the intent of the proposal and consistent with current industry practice. Normally, it was found that flight attendants on domestic operations were scheduled for 14 hours or less of duty, and that longer duty periods occurred on international flights.

The provision for additional flight attendants on longer international flights is intended to provide an extra measure of rest, particularly on prolonged flights, which may extend to 14 or more hours of flight time. The FAA recognizes that it is common industry practice for air carriers to provide flight attendants in addition to the FAA minimum complement when operating long-range nonstop international flights. In addition, the FAA believes that most airplanes on which long-haul operations would be conducted already provide adequate designated flight attendant seats, so that air carriers and operators would seldom need to block revenue passenger seats to accommodate the additional flight attendants.

No duty period could be scheduled for more than 20 hours, regardless of the nature of the air carrier operation. Duty periods could be extended under conditions in which unforeseen operational delays, including unforecast adverse weather, ATC, or mechanical delays, occur in flight or at the time of departure. Unforeseen delays include

any unanticipated delays that exceed the reach or control of an operator and that disrupt an otherwise properly scheduled flight.

These proposed flight attendant scheduling limitations parallel flight and duty limitations and rest time requirements for flight crewmembers, which are also predicated on the assumption that the scheduled flights normally terminate within the limitations. Scheduling would be expected to be based on what the carrier's experience showed to be a normal timeframe for a given flight or duty period. This is described in proposed §§ 121.466(*o*) and 135.273(*o*). These sections state that a flight attendant is not considered to be scheduled for duty in excess of the duty limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the air carrier or operator, such as adverse weather conditions, are not at the time of departure expected to reach their destination within the scheduled time.

Rest

Under proposed §§ 121.466(c) and 135.273(c), an air carrier or certificate holder would be required to schedule a rest period of at least 9 hours for any flight attendant who worked a duty period scheduled for 14 hours or less. This rest period would have to occur between the completed duty period and the next duty period.

Proposed §§ 121.466(d) and 135.273(d) would permit this rest period to be scheduled or reduced to a minimum of 8 consecutive hours, provided that the flight attendant was scheduled to receive a subsequent rest period of at least 10 consecutive hours. In no case the actual rest period be less than 8 consecutive hours. The subsequent rest period must be scheduled to begin within 24 hours of commencement of the reduced rest period and

must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period. This rest provision is comparable to the domestic flight crewmember limitations in current §§ 121.471 (b)(1) and (c)(1), and 135.285(b)(1) and (c)(1).

For any duty period scheduled for more than 14 hours, flight attendants would be required to receive a scheduled rest period of at least 12 consecutive hours, in accordance with proposed §§ 121.468(h) and 135.273(h). The rest period would be required to be given following the duty period, and prior to the next duty period. Under proposed §§ 121.468(i) and 135.273(i), the rest period could be scheduled or reduced to 10 consecutive hours, provided the flight attendant received a subsequent rest period of at least 14 consecutive hours. In no case could the actual rest period be less than 10 consecutive hours. The subsequent rest period must be scheduled to begin no later than 24 hours after the commencement of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

Both the 8-hour and 10-hour reduced rest periods could be planned, under the proposal. However, under no circumstances would flight attendants be permitted to receive any less than 8 consecutive hours of rest following a scheduled duty period of 14 hours or less, or any less than 10 consecutive hours of rest following a duty period of more than 14 scheduled hours. The provision for a longer rest period subsequent to any reduced rest period would prevent a flight attendant from receiving two consecutive minimum rest periods.

To facilitate the provision of the compensatory rest period following the 10-hour reduced rest period, §§ 121.466(j), and 135.273(j) are proposed. These paragraphs state that notwithstanding the permitted duty periods of up to 20 scheduled hours, flight attendants cannot be

scheduled for duty periods of 14 or more hours during the 24-hour period commencing after the beginning of the reduced period.

Allowances for reduction in rest would permit carriers to make scheduling adjustments in case of operational delays. The subsequent longer rest of 10 or 14 consecutive hours, like the flight crewmember limits, is intended to provide safeguards if the basic scheduled rest period is reduced, and to minimize the effects of fatigue.

A rest period must be prospective in nature, with the flight attendant knowing the rest period is scheduled and will be of a specified duration. The rest periods required by this proposal would be required to be taken over a period of consecutive hours at the flight attendant's domicile or away from their base, but may not be taken on the air carrier's aircraft. The FAA's intention is that the rest period be continuous, that is, uninterrupted by duty with the carrier.

Proposed §§ 121.466(l) and 135.273(l) would preclude any carrier from assigning any type of duty, including nonflight assignments (such as training or ground duties, to any flight attendant during a required rest period. However, the FAA requests comment on the most appropriate way to address reserve status, stand-by status or any similar assignments. Current industry practice varies in regard to the use of those terms and their relationship to duty or rest. The definition of rest period, as proposed, would preclude not only the assignment of duty during a required rest period but also the scheduling of reserve status or similar assignments during a required rest period. Public input will be considered in the clarification of terms and in determining the appropriate treatment of this issue in the final rule.

Weekly rest requirements are set forth in proposed §§ 121.466(n) and 135.372(n), which state that each flight attendant engaged in air transportation shall be

relieved from all duty for at least 24 consecutive hours during any 7 consecutive calendar days. Similar provisions currently apply to mechanics, dispatchers, and flight crewmembers. The proposed 24-hour rest could be taken during a layover. As the Industry Study indicated, it is already common practices among a majority of the carriers to provide 24 hours free from duty in a 7-day period. Requiring 24 hours rest within a 7-day period, in combination with the other minimum rest requirements, should help ensure that flight attendants are adequately rested prior to undertaking a flight assignment; the requirement is not intended to ensure that the flight attendants are adequately rested for training or other non-flight related activities. The 24-hour rest requirement could be postponed if a delay occurs during a duty period at the end of a period of 6 consecutive days worked, and the circumstance surrounding the delay is unforeseen and beyond the control of the carrier. The 24-hour rest period would immediately follow the completion of that duty period.

Proposed §§ 121.466(m) and 135.273(m) define deadhead transportation in a manner consistent with the use of the term in current pilot flight, duty, and rest regulations. Deadhead transportation is considered transportation, not local in character, that an air carrier requires of a flight attendant and provides to transport the flight attendant to an airport at which the flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home-station. Time spent in deadhead transportation is not considered part of a rest period.

The proposal would place shared responsibility on air carriers and flight attendants for ensuring that the flight attendant has received minimum rest prior to assigning or accepting assignment for a duty period. This is reflected in proposed §§ 121.466(k) and 135.273(k). These include both daily and weekly rest requirements.

General

The FAA considered a number of options prior to proposing those outlined here. This proposal takes a combined approach based on duty scheduling limitations, daily and weekly rest requirements, and augmented flight attendant crews. The single set of scheduling limitations was selected for all types of affected operations for several reasons as explained below.

Another alternative was setting lower scheduling limitations, or setting different limitations for different types of operations. This proposal, however, was designed to be as simple as possible to follow and monitor, and at the same time provide effective parameters for duty schedules and rest. The proposal sets one basic scheduled duty and rest limitation, based on typical industry practice, of 14 hours of scheduled duty and 9 hours of scheduled rest. Carriers would have additional flexibility under the proposal to increase the scheduled duty periods, but only under certain conditions. Comments are invited regarding this approach.

In particular, consideration was given to setting shorter duty period limitations and rest requirements for domestic operations, and longer duty period limitations and rest requirements for international operations. It was recognized that much domestic flying, especially regional and commuter flights, may entail flight segments of only 2 hours or less, while flag and supplemental operations may entail flights for more than 4 hours. Thus, separate regulations may be feasible. Many carrier contracts and work rules are based on these assumptions, which are also a basis for differing pilot flight, duty, and rest regulations. However, the distinction between domestic and international operations is not always useful. International flights to Canada, Mexico, or the Caribbean may be short haul. These can be completed in shorter duty periods, requiring shorter minimum rest periods, and using smaller airplanes. Transcontinental domestic flights may bear more resemblance to long haul transoceanic flights, requiring

longer duty periods and correspondingly longer rest periods.

Permitting longer duty periods is expected to allow the carriers flexibility based on the nature of the operation rather than whether it crosses international borders. Although the same regulations are contained in part 135 as in part 121, this has been done mainly for the sake of standardization. It is not expected that most regionals operating small aircraft will find it feasible to add 1 to 3 flight attendants to their short-haul flights simply to schedule longer duty periods. However, this option would be feasible for flight on large and, especially wide-body, aircraft on long-haul flights in which actual flight time may be as much as 10 hours.

These proposals are intended to provide basic scheduling limitations, and ensure at least minimum rest. If carriers intended to use longer scheduling limitations, they would have to meet certain safety-oriented conditions.

Part 125, Subpart B—Certification Rules and Miscellaneous Requirement

The Addition of Flight Attendant Duty Limitations and Rest Requirements

14 CFR part 125 was not addressed to the Industry Study, the petitions for rulemaking. As of February 1990, FAA statistics show that there are 48 active part 125 operators.

The proposed duty and rest limits for flight attendants were designed to address the needs of air carriers transporting revenue passengers. To apply the parts 121 and 135 proposed amendments to part 125 operators would be inappropriate because these operators have different scheduling concerns. The FAA acknowledges these operational differences and has instead included flight attendants in § 125.37 which is entitled "Duty time limitations."

Section 125.37(a) currently requires that each flight crewmember be relieved from all duty for at least 8 consecutive hours during any 24-hour period. This proposal would extend these provisions to part 125 flight attendants. Current § 125.37(b) allows the Administrator to specify rest, flight time, and duty time limitations, other than the limits listed in paragraph (a), in the carrier's operations specifications. This notice proposes no change to § 125.37(b); however, since paragraph (a) extends its provisions to flight attendants, paragraph (b) would apply to flight attendants as well.

Recordkeeping Requirements, Parts 121, 125, and 135

Present §§ 121.683 and 135.63 require that a certificate holder maintain current records of each crewmember's flight time records. Section 121.683(a)(1) currently requires certificate holders, supplemental air carriers, and commercial operators to maintain crewmember records, including those showing compliance with flight time requirements. The proposed revision to § 121.683 (a)(1) would add duty and rest requirements to the list of items carriers need to track. Carriers would need to maintain records of flight attendant daily duty and rest periods as well as weekly rest periods. The proposed revision to § 135.63 would add a subparagraph (a)(5) to require that certificate holders maintain records on flight attendant duty periods and rest periods in sufficient detail to determine compliance with the duty period limitations and rest requirements. The proposed records requirements will aid the carriers and the FAA in monitoring compliance with the proposed duty time and rest requirements.

The proposal to include flight attendants in § 125.37 would automatically incorporate recordkeeping requirements for flight attendants into the current recordkeeping requirements for crewmembers as described in § 125.401.

Additional Changes and Changes to Subpart Titles

For simplicity in the regulation, the FAA proposes to address all duty period limitations and rest requirements for all flight attendants in part 121 operations under a revised subpart P. This would require retitling the subpart, which currently addresses dispatchers only. The new title of the subpart would be "Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers; Flight Attendant Duty Period Limitations and Rest Requirements; Domestic, Flag and Supplemental Air Carriers and Commercial Operators." Section 121.461. "Applicability," would be revised to include the flight attendant duty period limitations and rest requirements.

Also under this proposal, the heading of part 135, subpart F, would be revised to eliminate the reference solely to "flight crewmembers," to reflect that the subpart would pertain to flight crewmembers and flight attendants. A new paragraph (e) on applicability would be added to § 135.261 to introduce a new section relating to flight attendant duty period limitations and rest requirements. Proposed § 135.273 would incorporate the duty limitations and rest requirements for flight attendants.

Paperwork Reduction Act

Information collection requirements for parts 121, 125, and 135 have been previously approved by the Office of Management and Budget (OMB) under the provisions of the paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Numbers as follows: For part 121, OMB Control Number 2120-0008; for part 125, OMB Control Number 2120-0085; and for part 135; OMB Control Number 2120-0039. The FAA is preparing changes to these control numbers to reflect the additional paperwork requirements proposed herein and will submit those changes to OMB.

Regulatory Evaluation Summary

The FAA's initial regulatory evaluation of the proposed amendments is summarized here. A copy of the complete evaluation has been included in the regulatory docket opened for the NPRM, along with the initial Regulatory Flexibility Determination and International Trade Impact Assessment.

The proposed amendments would establish flight attendant scheduled duty period limitations and rest requirements as provided for by the Federal Aviation Act of 1958, as amended, which empowers and directs the Secretary of Transportation to regulate rules concerning hours of service of "airmen and other employees" in the interest of safety. The proposed rule seeks to address insufficient rest that could affect safety in commercial aircraft, without imposing major economic burdens or alterations to the carriers' operations. The proposed rule follows extensive debate on the issue, and responds to concern expressed in Congress, the National Transportation Safety Board, and the industry.

The intent of this evaluation is to examine and, to the extent feasible, quantify the costs of the proposed rule. Cost estimates are considered for a 15-year period, and monetary values are based on 1992 dollars discounted at an annual effective rate of 7 percent.

This initial regulatory evaluation of the proposed rule to establish scheduled duty period limitations and rest requirements for flight attendants indicates that costs to operators would be incurred in the areas of recordkeeping and higher personnel costs in order to augment flight attendant crews. It is expected that the proposed rule would have its greatest effect on supplemental carriers.

Potential benefits are examined from a qualitative perspective, considering a variety of factors. The FAA expects the proposal, if enacted, to help ensure that flight attendants are rested and alert when performing both

emergency and routine safey-related duties, thereby reducing passenger and crew injuries and fatalities in air carrier accidents. The proposal seeks to take the initiative rather than be reactive. That is, the FAA is proposing to act when the earliest symptoms appear in order to prevent a safety problem from occurring. In this case, the symptom is duty time and inadequate rest periods for flight attendants and it creates a potential safety problem because it could impede their performance during emergency evacuations or during routine safety duties requiring a higher degree of alertness.

The proposed rule would establish scheduled duty period limitations and rest requirements for flight attendants under parts 121 and 135 of the FAR and would add flight attendants to the part 125 rest and recordkeeping requirements for flight crewmembers. Under parts 121 and 135, the FAA proposes to do the following: (1) Establish maximum scheduled duty periods; (2) establish minimum scheduled rest requirements; (3) allow reduced rest with provisions for compensatory rest; (4) establish at least a 24-consecutive-hour rest period during any 7 consecutive calendar days; and (5) require records to be maintained for each flight attendant on the proposed duty period limitations and rest requirements. The proposal would require one flight attendant in addition to the minimum crew for flights in scheduled duty periods of more than 14 hours but no more than 16 hours; two more than the minimum crew for flights in scheduled duty periods of more than 16 hours but no more than 18 hours; and three more than the minimum crew for flights in scheduled duty periods of more than 18 hours, but no more than 20 hours.

The FAA recognizes that there is a great deal of uncertainty associated with determining the benefits and costs of this action. The FAA invites comments on the evaluation. Persons submitting comments are requested to provide specific economic and trade data along with

their comments about the costs or benefits of the proposal. In addition, the FAA invites recommendations for better methods of achieving the objectives of the rule changes proposed in this notice.

Costs

The FAA estimates that over 15 years, the proposed amendments could cost the air carrier industry from $11.0 million to $32.2 million, discounted, in 1992 dollars. This cost range is because of uncertainty regarding the impact of certain of the proposed requirements, particularly for augmented flight attendant crews on flights in duty periods scheduled for more than 14 hours. The FAA believes that costs to most carriers in the current air carrier environment would be limited to recordkeeping and, in some cases, increasing flight attendant staffing on certain flights to provide the augmented crew that would be required for scheduled duty periods of more than 14 hours. Augmented flight attendant crews are already common in the industry, but the proposed rule would require carriers to augment crews more frequently than they do now.

The lower end of the range reflects recordkeeping costs, which would be incurred by all affected operators. This lower end cost estimate assumes that a large number of carriers are already in compliance in varying degrees. The higher end of the range includes recordkeeping costs plus increased personnel costs that would be incurred in order to augment flight attendant crews. The upper end cost assumes that carriers are largely in compliance with the proposed requirements, but that a minority of carriers schedule flight attendants for duty periods longer than 14 hours on flights with only the minimum crew required under § 121.391 and the carrier's operations specifications. The FAA requests additional information with documentation, if available, on any costs that would be incurred if the proposal is adopted as a rule.

The costs are based on the following FAA estimates: (1) The number of active flight attendants; (2) salary levels for flight attendants; (3) the initial cost of modifying an existing recordkeeping system to include flight attendants; and (4) the recurrent cost of maintaining records of flight attendant duty and rest times. Because supplemental carriers are expected to be disproportionately affected by the proposed rule, their costs are examined separately.

The actual cost of modifying the recordkeeping system tracking flight, duty, and/or rest time for flight crewmembers and other operations personnel to include flight attendants is expected to vary from carrier to carrier. These actual costs are based on the number of flight attendants employed by the air carrier, the sophistication of the carrier's present recordkeeping system, the adaptability of that recordkeeping system to include flight attendant records, and whether a system to monitor flight, duty, and/or rest times for flight attendants already exists.

In conducting research for the Industry Study, the FAA found that carriers use automated, semi-automated, and manual recordkeeping systems to monitor flight, duty, and rest times for operations personnel. Carriers often include flight attendants in their tracking systems to ensure and monitor compliance with company or union restrictions, to maximize utilization, or for payroll purposes.

The total cost of modifying recordkeeping systems industry-wide is estimated to be approximately $462,000, nondiscounted in 1992 dollars, for the industry's approximately 83,000-flight attendants. This would include approximately $6,700 for flight attendants employed by supplemental air carriers, and approximately $455,600 for the rest of the industry. The recurring cost to update an existing flight attendant record has been estimated to be approximately $1.16 million per year. This in-

cludes approximately $16,700 for supplemental air carriers and $1.14 million for the rest of the industry.

The Industry Study found that most carriers have contracts or rules addressing duty and rest requirements for both domestic and international operations. The FAA's comparison of the proposed amendments to the findings in the study indicates that most of the carriers reviewed during the study employed scheduled duty limitations equal to or more restrictive than those in the proposed rule. Thus, the scheduled duty period limitations contained in the proposal are not expected to have a significant effect on operators guided by union contracts or work rules.

A comparison of the proposed rest requirements to the findings in the Industry Study shows that most of the domestic operators contacted have rules that meet or exceed the proposed minimum rest requirements. (Although international layovers often were found to be 24 hours or longer, little information was available on air carrier scheduled rest period policies for international operations.) Therefore, the FAA is of the opinion that the proposed rest periods would not cause an economic burden to the air carrier industry.

The Industry Study found that most operators provide flight attendants with at least 24 consecutive hours of rest in any 7 consecutive days. The few operators that currently have no provision ensuring that flight attendants receive 24 consecutive hours of rest in any 7 consecutive calendar days could probably comply with the proposal by redistributing shifts rather than by hiring additional flight attendants.

Contracts and work rules reviewed show that most carriers, including supplementals, already staff longer flights with more than minimum flight attendant crews. However, exceptions appear to exist. For example, if flight attendants are assigned but do not show up for work, a flight may depart with a minimum crew. A mini-

mum crew could be used for flights on which minimum passenger service is planned. Therefore, the proposed requirements for augmented flight attendant crews is expected to affect certain carriers, but on relatively few flights.

The FAA does not have sufficient data on how often flights are scheduled for more than 14 hours but are not actually staffed with more than the minimum flight crew. Therefore, the FAA has limited data with which to estimate the impact of the proposal to require additional flight attenadnts above the minimum complement required by the air carriers' operations specifications. However, besides recordkeeping, this appears to be the only provision that would entail costs to the industry.

The FAA estimates that the air carrier industry could need as many as 10,000 additional scheduled duty periods per year in order to meet the proposal. Because supplemental air carriers were found to have longer scheduled duty periods, the FAA estimates that even though only 1,200 flight attendants are employed by supplemental air carriers (approximately one percent of the estimated 83,000 active flight attendants in the air carrier industry), as many as 60 percent of the additional scheduled duty periods would affect supplemental air carriers.

Based on an annual salary, including fringe benefits, of $35,075, the cost of a flight attendant per scheduled work day, excluding per diem, is estimated to be $234 ($35,075 annually divided by 150 average duty periods per year). By using this amount, the FAA estimates the recurring cost of an additional 6,000 scheduled duty periods for all supplemental carriers to be approximately $1,404,000, nondiscounted. The rest of the industry would account for the remainder of the additional duty periods, or 4,000 per year. This would entail a recurring cost of approximately $936,000, nondiscounted.

Based on the preceding discussion, the FAA estimates that the recordkeeping cost for supplemental operators

over 15 years would be approximately $158,400, discounted. The cost for supplemental operators to assign up to 6,000 additional scheduled duty periods per year over 15 years would be approximately $12.8 million, discounted. Thus, the total cost to all supplemental operators over 15 years would range from approximately $158,400, discounted (recordkeeping only), to approximately $12.9 million, discounted (recordkeeping, to approximately $15.5 million, discounted (recordkeeping and additional scheduled duty periods).

The FAA estimates that the recordkeeping costs for scheduled major, national, and regional operators over 15 years would be approximately $10.8 million, discounted. The costs for these operators to assign up to 4,000 additional scheduled duty periods per year over 15 years would be approximately $8.5 million, discounted. Thus, the total cost to all scheduled major, national, and regional operators over 15 years would range from approximately $19.3 million, discounted (recordkeeping), to approximately $15.5 million, discounted (recordkeeping and additional scheduled duty periods). When the costs for supplemental and scheduled air carriers are combined, total discounted costs over the next 15 years are $11.0 million to $32.2 million.

Benefits

Potential benefits are examined in the context of previous accident and incident experience. This provides a frame of reference for instances in which flight attendants may have exercised their safety responsibilities in potential life-and-death situations. Even though no studies have been performed to find a direct correlation between flight attendant duty and rest times and their performance in accidents and incidents, a decrease in the number or severity of injuries to passengers and crewmembers could occur over time, because of increased alertness and judgment as well as improved performance of gross motor skills.

Flight attendants have been recognized as essential crewmembers, and are required on certain passenger carrying flights. The FAA requires flight attendants to complete specific and recurrent training in safety duties, emergency evacuation procedures, and security-related procedures. Some airlines include flight attendants in cockpit resource management (CRM) training programs for flight crewmembers to promote efficiency and communication between flight and cabin crews.

The NTSB cites several occasions during which flight attendants were instrumental in assisting passengers after an accident or incident. Although it is difficult to assess an exact number of lives the flight attendants may have saved on these occasions, it is reasonable to conclude that passengers survived as a result of the flight attendants' actions. Such occurrences illustrate the vital role flight attendants play in passenger safety.

As required crewmembers in passenger-carrying operations, flight attendants also perform essential safety duties other than those associated with major emergencies. Such situations include emergency landings, evacuations, bomb threats, and injuries to people aboard the aircraft, including flight crewmembers and other flight attendants. In reviewing FAA and NTSB accident and incident data from 1975 through 1989, the FAA found at least 405 evacuations or evacuation-related occurrences. (Evacuation-related occurrences are those for which the data does not clearly state whether an evacuation occurred, but the circumstances appeared to have warranted an evacuation or emergency procedures.) The occurrences counted by the FAA in this review include accidents, emergency landings, and fires. However, this evaluation does not include accidents in which most of the people aboard were fatally injured, because in such an accident a flight attendant could provide little assistance to passengers and other crewmembers. These occurrences also do

not include "false alarm" emergency landings that did not result in an evacuation.

Due to the uncertainties of ascribing specific results of evacuations to flight attendant actions, the potential benefits of the proposed rule are difficult to quantify. The 15-year record of evacuations and evacuation-related occurrences in which flight attendant response was a factor in passenger survival indicates losses approximately, on average of $160 million per year due to injuries and fatalities. However, this 15-year record of evacuations and evacuation-related occurrences is an indicator of the number of passengers exposed to emergency evacuations. This record shows that throughout the industry, over 15 years, approximately 38,000 passengers were aboard airliners that experienced evacuations or on which evacuation-related occurrences took place. Approximately 2,500 of these passengers were aboard supplemental carriers.

Evacuations may occur because of bomb threats, aircraft fires or suspected fires, takeoffs or landings in which the aircraft skids off the runway, off-airport crashes, or other reasons. Industry experience shows that regardless of whether the emergency itself turns out to be significant, evacuations themselves are potentially hazardous actions. Injuries often occur regardless of the reason for the evacuation. Such injuries may be limited to friction burns, lacerations, and abrasions during slide use, or may include fractures and more serious injuries. When the evacuation takes place amid the stress and confusion of an actual emergency, the potential for serious injury greatly increases. Flight attendants are called upon not only to react automatically in response to training. They must also exercise rapid judgment under conflicting pressures: avoid unnecessary evacuations, but execute evacuations without delay if warranted.

Every evacuation is unique. Smoke and/or fire may be present inside or outside the cabin. Rain, high winds,

or other environmental factors may complicate escape from the aircraft by making doors difficult to open or overwing exits potentially treacherous. The airplane may come to rest on a hill or at a steep angle, making certain exits especially dangerous or blocked, and certain slides unusable. Passengers may panic or insist on taking carry-on luggage with them. Although other factors such as aircraft configuration and the environment and circumstances of the evacuation influence passenger egress from the airplane, flight attendants play a key role. Their response depends on training, their own injuries, degree of alertness, and the efficacy of crew communication.

In addition to the passengers exposed to evacuations and evacuation-related occurrences during the 15-year period reviewed, approximately 14,000 people were aboard the 120 aircraft on which injuries occurred in flight. Most of these injuries were the result of severe turbulence.

In-flight injury to crewmembers or passengers could require the attention of at least one flight attendant. Such occurrences could be followed by an emergency landing during which the full attention and good judgment of flight attendants is necessary to ensure the safety of all crewmembers and passengers.

The incapacitation of a flight crewmember or flight attendant could create a potentially dangerous situation. In a case in which a flight crewmember is incapacitated during an emergency, the remaining flight crewmembers would need to perform an emergency landing with less than the minimum flight crew. The attention of at least one flight attendant would probably be directed toward the incapacitated crewmember rather than toward the passengers during the emergency landing. In reviewing NTSB data from 1975 through 1989, the FAA found that 17 flight crewmembers and two flight attendants had become incapacitated during a flight.

Flight attendants perform other security-related functions that demand alertness and judgment but cannot be quantified in monetary terms. These include handling passengers who are unruly or under the influence of alcohol or drugs, passengers who are ill in flight, and incidents of depressurization.

The FAA has examined pertinent evacuation and other incidents over 15 years to develop a framework from which to gauge flight attendants' potential contributions to aviation safety. If flight attendants are protected through duty period limitations and rest requirements from excessive fatigue, they may be able to contribute to decreased injuries or fatalities in some future accident or incident, or to contribute to safety in less dramatic circumstances through alertness and vigilance in routine safety duties.

Based on the qualitative evaluation of the proposal, the FAA believes that the proposal is cost-beneficial. The proposed rule changes to Parts 121, 125, and 135 contained in this Notice are warranted because they would contribute to an overall enhancement of transport category airplane safety and utility that would both promote and enhance the U.S. air transportation system.

Initial Regulatory Flexibility Determination

Congress enacted the Regulatory Flexibility Act (RFA) of 1960 (Pub. L. 96-354) to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rules that may have a significant impact on a substantial number of small entities.

Regulatory Flexibility Criteria and Guidance, FAA Order 2100.14A, sets guidelines for determining whether small entities are significantly affected by regulations. The fleet size for an operator of aircraft for hire to be considered a small entity is nine or fewer aircraft. The threshold annualized cost levels for operators of aircraft for hire

in 1992 dollars are $114,700 for scheduled operators whose fleets have aircraft with seating capacities of more than 60, $83,500 for scheduled operators whose fleets have aircraft with seating capacities of 60 or less (other scheduled operators); and $4,450 for unscheduled operators); and $4,450 for unscheduled operators. The proposals in the NPRM would affect air carriers that provide passenger-carrying operations in aircraft for which flight attendants are required. Other types of aviation companies would not be affected.

According to FAA records of small entity air carriers that provide passenger-carrying operations in aircraft that require flight attendants, there are 21 operators that could be affected by the proposal. Of these 21 operators, 10 are scheduled operators whose aircraft have seating capacities of more than 60, 5 are other scheduled operators, and 6 are unscheduled operators.

As discussed in the cost section of this evaluation, the FAA estimates that increased personnel costs for augmented flight attendant crews for the purpose of complying with the proposed amendments would disproportionately affect supplemental, or charter, operations.

The FAA estimates that because scheduled operators whose aircraft have seating capacities of over 60 do operate some international charter flights, such operators may incur additional cabin crew costs. As noted earlier, some unscheduled operators provide international charter operations.

As noted above the threshold annualized cost levels in 1992 dollars is $114,700 for scheduled operators whose fleets have aircraft with seating capacities of more than 60, $63,500 for scheduled operators who fleets have aircraft with seating capacities of 60 or less (other scheduled operators), and $4,450 for unscheduled operators. The

FAA estimates that the cost for the 10 scheduled operators whose aircraft have seating capacities of more than 60 and 5 other scheduled operators (all of which are small entities) to comply with the proposal, if adopted, would be less than $114,700 or $63,500 annually. However, the FAA estimates that the six unscheduled operators that are small entities could incur costs more than $4,450 annually. Therefore, these operators could be affected by the proposals. However, under the guidelines presented in FAA Order 2100.14A, the FAA has determined that the proposed rule would not affect a substantial number of small entities—that is, at least 11 and more than one-third of the 21 small entities subject to the proposed rule. Therefore, the FAA has determined that a regulatory flexibility analysis is not necessary.

International Trade Impact Assessment

The FAA has determined that the proposed amendments to Parts 121, 125, and 135 would not have a significant affect on international trade. The FAA does not expect the proposals to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. The proposed rule would primarily affect U.S. operators of aircraft for hire that provide both domestic and international service. Furthermore, the proposed amendments are consistent with section 1102(a) of the Federal Aviation Act of 1958, as amended, which requires the FAA to exercise and perform its power and duties consistently with any obligation assumed by the United States in any agreement that may be in force between the United States and any foreign country or countries.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, or on the relationship between the national government and the states, or on

the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusions

For reasons discussed in the preamble and based on the findings in the Regulatory Flexibility Determination, the Regulatory Flexibility Analysis, and the International Trade Impact Analysis, the FAA has determined that the proposed amendments are not considered major under Executive Order 12291, dated February 17, 1981. I certify that the proposed amendments would not have a significant effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act and guidelines of FAA Order 2100.14A. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The regulatory evaluation of these proposed amendments, including a Regulatory Flexibility Determination and an International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Safety.

14 CFR Part 125

Aircraft, Airmen, Hours of work, Pilots.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Aviation safety, Pilots, Safety.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 121, 125, and 135 of title 14 of the Code of Federal Regulations (14 CFR parts 121, 125, and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

2. The heading for subpart P is revised to read as follows:

Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers; Flight Attendant Duty Period Limitations and Rest Requirements: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators

3. Section 121.461 is revised to read as follows:

§ 121.461 Applicability.

This subpart prescribes—

(a) Qualifications and duty time limitations for aircraft dispatchers for domestic and flag air carriers.

(b) Duty period limitations and rest requirements for domestic, flag, and supplemental air carriers and commercial operators conducting, and any flight attendant participating in, domestic, flag, and supplemental air carrier and commercial operations.

4. Section 121.466 is added to subpart P to read as follows:

§ 121.466 Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental air carriers and commercial operators.

(a) For purposes of this section—

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the domestic, flag, or supplemental air carrier or commercial operator. The time is calculated using either Coordinated Universal Time or the local time of the flight attendant's home base, to reflect the total elapsed time.

Flight attendant means an individual, other than a flight crewmember, who is assigned by a domestic, flag, or supplemental air carrier or commercial operator, in accordance with the required minimum crew complement under the certificate holder's operations specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin safety-related responsibilities.

Rest period means the time period free of all restraints or duty for a domestic, flag, or supplemental air carrier or commercial operator and free of all responsibility for work or duty should the occasion arise.

(b) Except as provided in paragraphs (e), (f), and (g) of this section, no domestic, flag, or supplemental air

carrier or commercial operator may assign, a scheduled duty period of more than 14 hours.

(c) Except as provided in paragraph (d) of this section, a flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between completion of the scheduled duty period and the commencement of the subsequent duty period.

(d) The rest period required under paragraph (c) of this section may be scheduled or reduced to 8 consecutive hours if the flight attendant is provided a subsequent rest period of at least 10 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(e) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least one flight attendant in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(f) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 16 hours, but no more than 18 hours, if the air carrier or commercial operator has assigned to each flight or flights in that duty period at least two flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(g) A domestic, flag, or supplemental air carrier or commercial operator may assign a flight attendant to a scheduled duty period of more than 18 hours, but no more than 20 hours, if the air carrier or commercial operator has assigned to the flight or flights in that duty period at least three flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the air carrier's or the commercial operator's operations specifications.

(h) Except as provided in paragraph (i) of this section, a flight attendant scheduled to a duty period of more than 14 hours but no more than 20 hours, as provided in paragraphs (e), (f), and (g) of this section, must be given a scheduled rest period of at least 12 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(i) The rest period required under paragraph (h) of this section may be scheduled or reduced to 10 consecutive hours if the flight attendant is provided a subsequent rest period of at least 14 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(j) Notwithstanding paragraphs (e), (f), and (g) of this section, if a domestic, flag, or supplemental air carrier or commercial operator elects to reduce the rest period to 10 hours as authorized by paragraph (i) of this section, the air carrier or commercial operator may not schedule, nor may any flight attendant accept a schedule, for a duty period of 14 or more hours during the 24-hour period commencing after the beginning of the reduced rest period.

(k) No domestic, flag, or supplemental air carrier or commercial operator may assign, nor may any flight at-

tendant accept, any duty period with the air carrier or commercial operator unless the flight attendant has had at least the minimum rest required under this section.

(l) No domestic, flag, or supplemental air carrier or commercial operator may assign, nor may any flight attendant accept, an assignment to perform any duty with the air carrier or commercial operator during any required rest period.

(m) Time spent in transportation, not local in character, that a domestic, flag, or supplemental air carrier or commercial operator requires of a flight attendant and provides to transport the flight attendant to an airport at which that flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendant's home station, is not considered part of a rest period.

(n) Each domestic, flag, or supplemental air carrier shall relieve each flight attendant engaged in scheduled air transportation and each commercial operator shall relieve each flight attendant engaged in air commerce from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

(o) A flight attendant is not considered to be scheduled for duty in excess of duty time limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the domestic, flag, or supplemental air carrier or commercial operator (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

5. Section 121.683 is amended by revising paragraph (a)(1) to read as follows:

§ 121.683 Crewmember and dispatcher record.

(a) * * *

(1) Maintain current records of each crewmember and each aircraft dispatcher (domestic and flag air carriers only) that show whether or not the crewmember or aircraft dispatcher complies with the applicable sections of this chapter, including, but not limited to proficiency and route checks, airplane and route qualifications, training, any required physical examinations, flight, duty, and rest time records;

* * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

6. The authority citation for Part 125 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g).

7. Section 125.37 is amended by revising the heading and paragraph (a) to read as follows:

§ 125.37 Duty period limitations.

(a) Each flight crewmember and flight attendant must be relieved from all duty for at least 8 consecutive hours during any 24-hour period.

* * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

8. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

9. Section 135.63 is amended by revising paragraphs (a)(3) and (a)(4)(x), adding a new paragraph (a)(5), and revising paragraph (b) to read as follows:

§ 136.63 Recordkeeping requirements.

(a) * * *

(3) A current list of the aircraft used or available for use in operations under this part and the operations for which each is equipped;

(4) * * *

(x) The date of the completion of the initial phase and each recurrent phase of the training required by this part; and

(5) An individual record for each flight attendant used in operations under this part, including the flight attendant's duty periods and rest periods, maintained in sufficient detail to determine compliance wtih the duty period limitations and rest requirements of this part.

(b) Each certificate holder shall keep each record required by paragraph (a)(3) of this section for at least 6 months, and each record required by paragraphs (a)(4) and (a)(5) of this section for at least 12 months.

* * * *

10. Subpart F is amended by revising the hearing to read as follows:

Subpart F—Crewmember Flight Time and Duty Period Limitations and Rest Requirements

11. Section 135.261 is amended by revising the introductory text of the section and by adding a new paragraph (e) to read as follows:

§ 136.261 Applicability.

Sections 135.263 through 135.273 prescribe flight time limitations, duty period limitations, and rest requirements for operations conducted under this part as follows:

* * * *

(e) Section 135.273 prescribes duty period limitations and rest requirements for flight attendants in all operations conducted under this part.

12. Section 135.273 is added to Subpart F to read as follows:

§ 136.273 Duty period limitations and rest time requirements.

(a) For purposes of this section—

Calendar day means the period of elapsed time, using Coordinated Universal Time or local time, that begins at midnight and ends 24 hours later at the next midnight.

Duty period means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder. The time is calculated using either Coordinated Universal Time or the local time of the flight attendant's home base, to reflect the total elapsed time.

Flight attendant means an individual, other than a flight crewmember, who is assigned by the certificate holder, in accordance with the required minimum crew complement under the certificate holder's operations specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin safety-related responsibilities.

Rest period means the time period free of all restraint or duty for the certificate holder and free of all responsibility for work or duty should the occasion arise.

(b) Except as provided in paragraphs, (e), (f), and (g) of this section, no certificate holder may assign, nor may any flight attendant accept, a scheduled duty period of more than 14 hours.

(c) Except as provided in paragraph (d) of this section, a flight attendant scheduled to duty period of 14 hours or less as provided under paragraph (b) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(d) The rest period required under paragraph (c) of this section may be scheduled or reduced to 8 consecutive hours if the flight attendant is provided a subsequent rest period of at least 10 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur betwen the completion of the scheduled duty period and the commencement of the subsequent duty period.

(e) A certificate holder may assign a flight attendant to a scheduled duty period of more than 14 hours, but no more than 16 hours, if the certificate holder has assigned to the flight or flights in that duty period at least one flight attendant in addition to the minimum flight attendant complement required for flight or flights in that duty period under the certificate holder's operations specifications.

(f) A certificate holder may assign a flight attendant to a scheduled duty period of more than 16 hours, but no more than 18 hours, if the certificate holder has assigned to the flight or flights in that duty period at least two flight attendants in addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(g) A certificate holder may assign a flight attendant to a scheduled duty period of more than 18 hours, but no more than 20 hours, if the certificate holder has assigned to the flight or flights in that duty period at least three flight attendants in the addition to the minimum flight attendant complement required for the flight or flights in that duty period under the certificate holder's operations specifications.

(h) Except as provided in paragraph (i) of this section, a flight attendant scheduled to a duty period of more than 14 hours but no more than 20 hours, as provided in paragraphs (e), (f), and (g) of this section, must be given a scheduled rest period of at least 12 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(i) The rest period required under paragraph (h) of this section may be scheduled or reduced to 10 consecutive hours if the flight attendant is provided a subsequent rest period of at least 14 consecutive hours; this subsequent rest period must be scheduled to begin no later than 24 hours after the beginning of the reduced rest period and must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(j) Notwithstanding paragraphs (e), (f), and (g) of this section, if a certificate holder elects to reduce the rest period to 10 hours as authorized by paragraph (i) of this section, the certificate holder may not schedule, nor may any flight attendant accept a schedule, for a duty period of 14 or more hours during the 24-hour period commencing after the beginning of the reduced rest period.

(k) No certificate holder may assign, nor may any flight attendant accept, any duty period with the certificate holder unless the flight attendant has had at least the minimum rest required under this section.

(l) No certificate holder may assign, nor may any flight attendant accept, an assignment to perform any duty with any certificate holder during any required rest period.

(m) Time spent in transportation, not local in character, that a certificate holder requires of a flight attendant and provides to transport the flight attendant to an airport at which the flight attendant is to serve on a flight as a crewmember, or from an airport at which that flight attendant was relieved from duty to return to the flight attendant's home station, is not considered part of a rest period.

(n) Each certificate holder shall relieve each flight attendant engaged in scheduled air transportation from all further duty for at least 24 consecutive hours during any 7 consecutive calendar days.

(o) A flight attendant is not considered to be scheduled for duty in excess of duty time limitations if the flights to which the flight attendant is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

Issued in Washington, D.C., on March 26, 1993.

David R. Harrington,

Acting Director, Flight Standards Service.

[FR Doc. 93-7433 Filed 3-29-93; 8:45 am]

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No. 95-361

In the Supreme Court of the United States

OCTOBER TERM, 1995

SUN COUNTRY AIRLINES, INC., PETITIONER

v.

FEDERAL AVIATION ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Aviation Administration adequately justified its adoption of a rule requiring air carriers to provide duty scheduling limitations and rest requirements for flight attendants.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is unreported, but the decision is noted at 56 F.3d 1531 (Table).

JURISDICTION

The judgment of the court of appeals was entered on May 30, 1995. A petition for rehearing was filed on July 14, 1995, and was denied on July 28, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 49 U.S.C. 46110(e).

STATEMENT

The Federal Aviation Administration (FAA) has adopted a rule requiring air carriers, air taxis, and commercial operators to provide duty period scheduling limitations and rest requirements for flight attendants. Petitioner, a charter air carrier certified by the FAA under Part 121 of the Federal Aviation Regulations, 14 C.F.R. Pt. 121, requested the court of appeals to invalidate that rule. Petitioner contended that the FAA's rule violated the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, because the agency did not provide an adequate justification for its action. The court of appeals rejected that argument and denied petitioner's request for relief. Pet. App. 1a-3a.

1. The Federal Aviation Act of 1958, as recodified, 49 U.S.C. 40101 *et seq.*, empowers the FAA to promote civil air safety by prescribing regulations "for the maximum hours or periods of service of airmen and other employees of air carriers." 49 U.S.C. 44701(a)(4) (1994) . The FAA has issued regulations under that authority establishing limitations on flight duty and rest requirements for air carrier flight crew members, including pilots, flight engineers, and flight navigators. See 14 C.F.R. 121.471; 14 C.F.R. 121.481-121.493; 14 C.F.R. 121.500-121.525.

In 1985, the FAA received petitions for rulemaking from the Association of Flight Attendants and the Joint Council of Flight Attendants Unions. They urged the FAA to issue flight and duty time regulations for flight attendants. See 50 Fed. Reg. 6185 (1985); 50 Fed. Reg. 25,252 (1985). On January 23, 1989, the FAA concluded that the proposed rule-

making was not in the public interest and denied the petitions. See Pet. App. 7a. Four years later, the FAA revisited that issue. On March 26, 1993, the FAA issued a notice of proposed rulemaking suggesting duty period scheduling limitations and rest requirements for flight attendants engaged in air transportation and air commerce. See 58 Fed. Reg. 17,024 (1993). The FAA received comments, and on August 19, 1994, it issued a final rule establishing the limitations and requirements at issue here. See 59 Fed. Reg. 42,974; see Pet. App. 4a-85a.

Subject to certain exceptions, the rule limits the scheduled duty periods for flight attendants on domestic flights to fourteen hours. A carrier may permit flight attendants to exceed applicable limitations on scheduled duty periods if it augments the number of flight attendants on a flight above the number otherwise required by regulation. Subject to certain exceptions, the rule also requires a minimum rest period of nine hours after a duty period of fourteen hours or less and a minimum rest period of twelve hours after duty periods exceeding fourteen hours. Alternatively, air carriers may satisfy the rule by imposing on flight attendants the same duty limitations and rest requirements that apply to other flight crew members. See 14 C.F.R. 121.467; Pet. App. 74a-77a.

2. On September 1, 1994, petitioner requested the United States Court of Appeals for the District of Columbia Circuit to review the FAA's rule. See 49 U.S.C. 46110 (1994) (authorizing the court of appeals to review FAA regulations). Petitioner contended that the FAA had failed to provide an adequate justification for the rule in light of the agency's 1989 decision not to require duty limitations and rest periods

for flight attendants. The court of appeals denied the petitioner's request for relief. Pet. App. 1a-3a.

The court of appeals observed that this Court's decision in *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983), requires an agency "to supply a reasoned analysis" supporting a change in the agency's position. Pet. App. 2a. The court concluded that the agency had done so here. It noted that the FAA had explained in the rulemaking that a 1989 study of flight attendant flight, duty, and rest times in the air carrier industry (which was completed after the agency terminated the earlier rulemaking) had prompted the agency to rethink its earlier decision. *Ibid.* The court of appeals concluded that "it is clear from the record and from the agency's stated rationale that it adopted a new position based on new information." *Ibid.*

ARGUMENT

1. Petitioner is mistaken in contending (Pet. 13) that the court of appeals' decision "seriously undermines" the principles set out in this Court's decision in *State Farm, supra.* The court of appeals correctly recognized that the FAA was obligated to provide a "reasoned analysis" for its departure from its previous position. Pet. App. 2a. The court examined the FAA's explanation for the rule, which was set out in the rulemaking record. It concluded the FAA was entitled to renew its examination of the issue in light of additional data (principally a 1989 study of flight attendant duty times) that had become available after the FAA had denied the previous rulemaking petitions. Pet. App. 2a.

Petitioner contends (Pet. 15) that the 1989 study could not provide "the necessary empirical foundation

for the 1994 rule" because an FAA official had testified before a congressional subcommittee in 1991 that a new rule was not necessary. See Pet. App. 93a-132a (reproducing committee testimony). That contention is not well founded. An agency official's testimony before a congressional committee should not preclude the agency from initiating new rulemaking to reexamine a problem or the data relevant to its resolution. This case demonstrates why a rule of that sort would be inappropriate. The official's testimony did not express an inalterable position. *Id.* at 96a (stating that the matter is not "a closed book"). Members of the subcommittee strongly questioned the official's conclusions. See *id.* at 97a-111a, 113a-116a, 118a-128a, 130a-132a. The agency was entitled to reconsider its position, reevaluate the significance of the 1989 study, and redetermine the need for action. See *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863-864 (1984) (an agency must consider "the wisdom of its policy on a continuing basis").

2. Petitioner is incorrect in its contention (Pet. 17-20) that the court of appeals' decision conflicts with decisions from other circuits. The court of appeals' ruling that the FAA had adequately identified reasons for its departure from a prior agency decision is consistent with the supposedly conflicting cases that petitioner cites. See *Citizens Awareness Network, Inc.* v. *NRC*, 59 F.3d 284, 291-292 (1st Cir. 1995); *Radio Ass'n on Defending Airwave Rights, Inc.* v. *Department of Transportation*, 47 F.3d 794, 804-805 (6th Cir. 1995), cert. denied, 116 S. Ct. 59 (1995); *United Video, Inc.* v. *FCC*, 890 F.2d 1173, 1181-1182 (D.C. Cir. 1989). In each of those cases, the courts invoked the *State Farm* standard and required

the agency to provide a "reasoned analysis" for the agency's departure from a prior decision. The courts evaluated the adequacy of the particular justifications in each case. None of the cases suggests any confusion or conflict as to the correct legal standard.

3. In reality, petitioner objects to the court's application of the familiar *State Farm* standard to the facts of this case. This Court does not normally grant review to determine whether an established legal standard was correctly applied in a particular instance. See, *e.g.*, *Mobil Oil Corp.* v. *Federal Power Comm'n*, 417 U.S. 283, 309-310 (1974). This case presents no reason for the Court to depart from that practice. It presents only fact-specific questions that do not merit further review. See, *e.g.*, *Rice* v. *Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 73-74 (1955); *United States* v. *Johnston*, 268 U.S. 220, 227 (1925).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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No. 95-361

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

SUN COUNTRY AIRLINES, INC.,
Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONER'S REPLY BRIEF

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LIST OF PARTIES TO THE PROCEEDING PURSUANT TO RULES 14.1(b) AND 29.1

Pursuant to Supreme Court Rule 14.1(b), Petitioner Sun Country Airlines, Inc. certifies that the names of all parties to this proceeding appear in the caption of this petition for a writ of *certiorari*.

Pursuant to Supreme Court Rule 29.1, Petitioner Sun Country Airlines, Inc. certifies that it is a charter air carrier certificated by the FAA under Part 121 of the Federal Aviation Regulations. Sun Country does not have any outstanding publicly-traded securities, nor does Sun Country have a publicly-owned parent, subsidiary, or affiliate.

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PETITIONER'S REPLY BRIEF

Sun Country Airlines, Inc., pursuant to Supreme Court Rule 15.6, respectfully submits its reply brief in support of its petition for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

ARGUMENT

The Federal Aviation Administration ("FAA") misconceives the question presented in this proceeding. The adequacy of the agency's justification for the substance of the challenged Final Rule is not the point. The issue

raised by Sun Country, and completely ignored by the FAA, is that the agency reversed a prior decision not to promulgate substantially the same rule without providing any explanation for taking a different course.

This misconception is the entire crux of the FAA's position and is distilled in a single sentence: "An agency official's testimony before a congressional committee should not preclude the agency from initiating new rulemaking to re-examine a problem or data relevant to its resolution." FAA Brief in Op., p. 5. That statement may be true enough as far as it goes, but it does not go far enough in this instance. The FAA utterly failed to explain the reasons for its reversal of a prior decision on the same subject.

This Court's opinion in *State Farm* expressly teaches that an administrative agency's determinations are not immutable. When an agency chooses to reverse its course, however, it must supply a reasoned analysis for the change. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983). If an agency fails to provide the requisite reasoned analysis, its action is arbitrary and capricious in violation of the Administrative Procedure Act.

Sun Country thus disagrees with the FAA's statement to the extent that it would allow an agency to reverse a past decision without supplying the requisite reasoned analysis for the change. So long as a reasoned analysis is provided, Sun Country does not dispute the ability of an agency to reverse a decision, even one that was reaffirmed by subsequent testimony before Congress. Here, however, the FAA presented no reasoned analysis for its change of position. The entire administrative record is devoid of any explanation that supports the agency's change of position. If, in fact, the only thing that caused the FAA to reconsider its 1989 decision is that the agency, under a new administration, reached a different conclusion using the same data, such fact is not stated in the

administrative record. The FAA's reasoning is therefore intolerably mute.

The following facts are uncontroverted in this proceeding. The FAA reversed its 1989 decision not to promulgate essentially the same flight attendant duty and rest regulations that were adopted in 1994 in FAA Docket No. 27229. The FAA's Associate Administrator for Regulation and Certification, during March 1991 testimony to the congressional committee charged with oversight of the agency, (1) reaffirmed the agency's 1989 decision not to promulgate the subject regulations and (2) severely disparaged the results of the 1989 Industry Study.

The FAA therefore cannot logically maintain that its 1994 decision to adopt the same rule was based in large part, if not completely, on the 1989 Industry Study which it found totally wanting in 1991.

CONCLUSION

For the foregoing reasons, the petition for writ of *certiorari* should be granted.

Respectfully submitted,

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